
PUBLIC HEARINGS
DETERMINATION OF CONCENTRATION OF RESPIRABLE COAL MINE DUST
MSHA AND NIOSH JOINT SINGLE SAMPLE PROPOSED RULE
AND MSHA PLAN VERIFICATION RULE
Monday, August 7, 2000
Morgantown, West Virginia

APPEARANCES:

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P R O C E E D I N G S

(8:30 a.m.)

MR. NICHOLS: Good morning, my name is Marvin Nichols and I am the Administrator for Coal Mine Safety and Health, and I will be the moderator for today's public hearings. On behalf of Davitt McAteer, the Assistant Secretary for Mine Safety and Health, and Dr. Linda Rosenstock, Director of the National Institute for Occupational Safety and Health, I want to welcome all of you here today.

This morning, during the first of the two public hearings we are holding here today, we want to address the MSHA and NIOSH joint single sample proposed rule, which was published in the Federal Register on July the 7th, along with MSHA's Plan Verification rule. After lunch, we intend to convene the second hearing, which will focus on the plan verification rule. However, if you have comments this morning which are relevant to the plan verification proposal, we will include them in that record as well.

Because we will be discussing the MSHA/NIOSH joint proposed rule this morning, representatives from NIOSH will serve on our panel. Let me introduce the panel I have up here with me. To my left is Ron Schell, Chief of our Coal Mine Safety and Health Division of Health; on my right is Larry Reynolds from the Office of the Solicitor.

1 And behind us, we have our technical experts
2 from NIOSH, Paul Hewett and Eileen Kuempel; and from MSHA,
3 Carol Jones, the Director of Standards, Regulations and
4 Variances; George Niewiadomski, Mine Safety and Health
5 Specialist, Coal Mine Safety and Health; Thomas Tomb, Chief,
6 Dust Division, Pittsburgh Safety and Health Technology
7 Center; Jon Kogut, Mathematical Statistician, Office of
8 Program Policy and Evaluation; Rebecca Roper, Senior Health
9 Scientist, and Ron Ford, Economist, from the Office of
10 Standards, Regulations, and Variances. And Rodney Brown
11 from MSHA's Office of Information and Public Affairs is also
12 present at this hearing, and Rodney will provide press kits
13 for the media in attendance and will be available to answer
14 any press questions. Rodney is back at the table.

15 The formal rules of evidence do not apply, and
16 the hearing is conducted in an informal manner. Those of
17 you who have notified MSHA in advance will be allowed to
18 make your presentations first. Following these
19 presentations, others who request an opportunity to speak
20 will be allowed up to 20 minutes to do so, and if necessary,
21 we can extend that time to give all interested parties an
22 opportunity to present testimony. I would ask that all the
23 questions regarding these rules be made on the public record
24 and that you refrain from asking the panel members questions
25 when we are not in session, because we want all the

1 discussion on the rule in the session on the record.

2 A verbatim transcript of this hearing is being
3 taken and it will be made available as part of the official
4 record. Please submit any overheads, slides, tapes, and
5 copies of your presentations to me so that these items may
6 be made part of the record. The hearing transcript, along
7 with all of the comments that MSHA has received to date on
8 the proposed rule, will be available for review. If you wish
9 a personal copy of the hearing transcript, you should make
10 your own arrangements with the Court Reporter.

11 We will also accept additional written comments
12 and other appropriate data on the proposed rules from any
13 interested party, including those who have not presented
14 oral statements today. These written comments may be
15 submitted to me during the course of this hearing or sent to
16 the address listed in the hearing notice. All written
17 comments and data submitted to MSHA will be included in the
18 official record. If you wish to present any written
19 statements or information for the record today, please
20 clearly identify them. When you give them to me, I will
21 identify them by title as being submitted for the record. An
22 attendance sheet will also be circulating in the room today
23 so that you may register your presence.

24 To allow for the submission of posthearing
25 comments and data, the record will remain open until

1 September 8, 2000. As you know, we have scheduled two
2 additional public hearings to specifically address the
3 single, full-shift sample proposal. They will be in
4 Prestonsburg, Kentucky, on August the 10th from 8:30 a.m.
5 till 12:00 noon and in Salt Lake City, Utah, on August the
6 16th from 8:30 until noon. The hearings for the plan
7 verification proposal will follow in the afternoon on the
8 same days and at the same locations.

9 Before we begin, let me give you some background
10 on the proposal we are addressing this morning. This is a
11 joint proposal. In it, the Secretary of Labor and the
12 Secretary of Health and Human Services announce their
13 proposed finding in accordance with the Federal Mine Safety
14 and Health Act of 1977 that the average concentration of
15 respirable dust to which each miner in the active workings
16 of a coal mine is exposed can be accurately measured over a
17 single shift.

18 In this proposal, the Secretaries are proposing
19 to rescind a 1972 finding on the accuracy of such
20 single-shift sampling. The joint proposal also addresses the
21 final decision and order in the National Mining Association
22 v. Secretary of Labor, issued by the United States Court of
23 Appeals for the 11th Circuit on September the 4th, 1998.
24 That case vacated a 1998 joint finding and MSHA's proposed
25 policy concerning the use of single, full-shift respirable

1 dust measurements to determine noncompliance when the
2 applicable respirable dust standard was exceeded.

3 As I said before, we're here this morning while
4 the representatives of NIOSH are able to join us to hear
5 your comments about the single sample proposal. Also, as I
6 said earlier, if there are comments which are relevant to
7 the plan verification proposal we have scheduled for
8 discussion this afternoon, we will include them in the rule-
9 rule-making for both proposals.

10 As most of you know, the single sample issue has
11 been through a long public process, which is outlined in the
12 preamble of the proposal. That process ended with a
13 September 4, 1998 ruling by the United States Court of
14 Appeals for the 11th Circuit. The Court of Appeals vacated
15 the 1998 joint finding, concluding that "the record contains
16 no finding of economic feasibility," and that MSHA "failed
17 to comply with Section 811(a)(6) of the Mine Act.
18 Therefore, in response to the Court's ruling, the
19 Secretaries are proposing to add a new mandatory health
20 standard to 30 CFR Part 72. The 1972 joint notice of
21 finding would be rescinded and a new finding would be made
22 that a single, full-shift measurement will accurately
23 represent atmospheric conditions to which a miner is exposed
24 during such shift. This finding is the basis for the new
25 proposed mandatory health standard.

1 Let me now give you a brief description of the
2 1972 notice of finding that MSHA and NIOSH are proposing to
3 rescind. In 1972, a notice of finding under Section 202(f)
4 of the Federal Coal Mine Safety and Health Act of 1969 was
5 published by the Secretaries of Interior and Health,
6 Education, and Welfare. In that finding, the Secretaries
7 concluded that a single shift measurement will not
8 accurately represent the atmospheric conditions to which the
9 miner is continuously exposed. MSHA and NIOSH have concluded
10 that the statistical analysis and the finding itself were
11 not germane to the congressional intent as stated in Section
12 202(f) of the 1969 Coal Act and its successor, the Federal
13 Mine Safety and Health Act of 1977.

14 On examination, it can be seen that the
15 conclusion reached in the notice is not consistent with the
16 title of the notice. Specifically, the title of the proposed
17 and final notices published in 1971 and 1972 refer to the
18 accuracy of single shift measurements taken "during such
19 shift."

20 The conclusion reached in the final notice
21 issued in 1972 refers to the accuracy of such measurements
22 to which the miner "is continuously exposed." Section
23 202(f) specifies a finding focused on the atmospheric
24 conditions of such shift, not the atmospheric conditions
25 during which the miner is continuously exposed. The analysis

1 did not address the accuracy of a single, full-shift
2 measurement in representing atmospheric conditions during
3 the shift on which it was taken. For this and other reasons,
4 such as advancements in technology set forth in the
5 proposal, the Secretaries are proposing to rescind the 1972
6 final joint finding.

7 This proposal, like the previous final finding
8 vacated by the Court of Appeals, addresses MSHA's ability to
9 accurately measure in a single sample the concentration of
10 respirable dust to which a miner is exposed during a single
11 shift. Accordingly, a new mandatory standard would be added
12 to Part 72 of 30 CFR, which would allow MSHA to use a
13 single, full-shift measurement of respirable coal mine dust
14 to determine average concentration on a shift if that
15 measurement accurately represents atmospheric conditions to
16 which a miner is exposed during such shift.

17 MSHA believes that single sample measurements
18 are more protective of miners' health than the current
19 practice of averaging multiple samples. The process of
20 averaging dilutes a high measurement made at one location
21 with lower measurements made elsewhere. MSHA recognizes
22 that single, full-shift samples have been used for years by
23 OSHA and at metal and nonmetal mines in this country.

24 The coal mining community had the opportunity to
25 experience the use of single, full-shift measurement for a

1 two-year period in 1992 and 1993 and from May 1998 until
2 September 1998, when the Court of Appeals vacated the
3 agencies' finding. We are interested in your comments
4 concerning the application of single, full-shift samples at
5 your mine during that time period.

6 Additionally, because the proposal would be
7 implemented as a mandatory health standard, all elements of
8 Section 101(a)(6)(A) of the Mine Act have been addressed in
9 this proposal. These include the portions of the proposal
10 which address health effects, develop a quantitative risk
11 assessment, and the significance of risk. We are here today
12 seeking your comments on this proposal.

13 At this time, we will consider any evidence or
14 discussion on any aspect of the proposed rule. As I stated
15 earlier we will begin with those who have requested in
16 advance an opportunity to speak. Following their
17 presentations, anyone who did not request an opportunity to
18 speak in advance will be allotted time. To ensure we obtain
19 an accurate record when you speak, please come to the podium
20 or the table and begin by clearly stating your name and
21 organization. The seating is limited so could -- do we have
22 people outside trying to get in? Are we okay? We're okay.
23 Okay, our first speaker today, our presenter is Joe Main
24 with the United Mine Workers of America.

25 MR. MAIN: Good morning. Some points of

1 clarification. My name is Joseph Main, with the United Mine
2 Workers of America, and I'd like to do a little bit of
3 cleanup before I get started this morning just to reaffirm
4 the discussion today. On two past occasions, I have talked
5 to folks from MSHA to let them know that the folks that's
6 here today are going to be talking about the rules in total
7 as they do their presentations. And I think you can
8 picture, there's a lot of miners here today that's got work
9 to get back to, and they need to have that opportunity and I
10 understand --

11 UNIDENTIFIED SPEAKER: Can't hear you, Joe.

12 MR. MAIN: I understand that's the procedure
13 we're going to use, which works out for that. Also, in
14 terms of the record, we're going to be submitting several
15 documents throughout the course of the public hearings.
16 We've already put in the record by reference the Federal
17 Advisory Committee report of 1996 and the full file on the
18 lawsuit filed by the UMWA regarding the implementation of
19 reforms. And if there's a problem with the referencing of
20 those materials, let us know and we'll provide you with the
21 volume of information. But that's already on the record at
22 MSHA.

23 And like I say, there'll be several other
24 documents that will be submitted in the record over the
25 course of the public hearings. I think it's safe to say, at

1 least from our perspective, that this rule probably will not
2 be finalized by the current administration. And that's in
3 light of the fact that the rule-making process and the
4 length of time it takes to get a rule through, it would
5 basically take a superhuman being to pull that event off.
6 And we've had several rules that's been in the hopper for
7 three, four years at the quickest time frame for a rule to
8 be finalized. So, having said that, there is serious doubt
9 in our minds that the proposals as laid out there on the
10 table will be finalized by the current administration, and
11 we would fully expect any action to take place after the
12 next administration takes power in the country. And as we
13 all know, when there is a shift in power in the country,
14 there are different philosophies that are applied and
15 different decisions that are made.

16 And I'll take you back to something I must talk
17 about here in just a minute, but in 1980, I was part of an
18 effort by the miners to do various reforms of the Coal Mine
19 Health and Safety standards, one of which was the reform of
20 the coal dust program. And there was a proposal that was
21 issued on April 8th, 1980, that would give the miners the
22 full participation rights paid by the operator in the dust
23 sampling program.

24 Unfortunately, that proposal was never finalized
25 before that administration left town, and the following

1 administration made a decision to eliminate that entire
2 proposal. And with those kind of thoughts in mind, we all
3 know how the system works, we have some serious reservations
4 about what's been laid out here and what the end result may
5 well be by individuals who will be no longer maybe around to
6 finalize the rule, given the history.

7 I have also filed a FOIA that has requested
8 specific information on the number of mines, the number of
9 inspectors, that's very relevant to the rule-making process.
10 As of Friday, when I left, I still haven't received a
11 response on part of that FOIA; I did get the information on
12 the dust sampling that's been conducted over the last five
13 years, but we do need a copy of, or a response to that FOIA
14 to gain that information.

15 Excuse me. As the head of the Mine Workers
16 Health and Safety Department, I have had an opportunity over
17 the years to speak to a lot of miners and be heavily
18 involved in the discussions on reforming the respirable dust
19 -- coal dust program. I also served as a member of the
20 Federal Advisory committee, which was charged by the
21 Secretary of Labor to develop proposed standards for MSHA to
22 use as a template for reforming the coal mine dust program.
23 That was a charge given to us by the Secretary of Labor.
24 And as I present my testimony, I'll be presenting testimony
25 both as a member of the Federal Advisory Committee -- former

1 Federal Advisory Committee -- that helped developed those
2 standards and, as well, the head of the Safety Department,
3 which has the responsibility to represent the interests of
4 miners across this country.

5 Having said those things, I would, I'd like to
6 get into the substance of the proposal. And I think one has
7 to understand that all of these proposals are
8 interconnected. The single, full-shift sampling proposal,
9 plan verification, and the sampling proposal that's
10 connected with the plan verification. And you have to read
11 all of those in connection with each other to really
12 understand what the substance of this rule is, because there
13 are parts that are applied across the board.

14 And based on our observations of what this rule
15 really does, we wish it was maybe, in one extent, as simple
16 as talking about a single sample rule and a plan
17 verification, but it's not that simple. Our review found
18 that the proposed rules would eliminate the Mine Operator
19 Dust Sampling program and all operator dust sampling
20 responsibilities. It would eliminate the procedures for
21 dust sampling of miners and areas of the mine, including the
22 frequency and procedures the sampling is to be done.

23 It would increase the dust exposure compliance
24 levels miners may be exposed to. It would substantially
25 reduce dust sampling frequency. It would allow operators to

1 use respiratory protection in lieu of engineering controls.
2 It would establish a plan verification requirement of coal
3 mine dust control plans. It would allow MSHA to use a
4 single-shift sampling method with a limited number of
5 miners' exposure sampled for the full shift.

6 It would revise the quartz sampling procedures.
7 It would establish procedures allowing administrative
8 controls to be used as an alternative to engineering
9 controls for compliance. It would increase mine operator
10 posting of dust plan information, increase miner ventilation
11 plan information, revise the Part 90 mining requirements,
12 likewise eliminating parts of those. And the preamble also
13 discusses miner participation in sampling, continuous dust
14 monitoring, MSHA sampling responsibilities and procedures
15 and other things that I haven't addressed, but there's a
16 whole lot of things in this package besides the single
17 sample issue and plan verification.

18 And as we started to plow into this proposal, we
19 learned very quickly how complicated the rule actually was.
20 And what you had to do was read the entire substance of that
21 rule and also evaluate the enormous policy and preamble
22 information to figure out the connections to those. And on
23 July 7th, of course, MSHA issued those two rules overhauling
24 the program in a very impacting way. And since that time,
25 we've tried to sit down and read it. The first volume of

1 paper we had was, the raw text was 700 pages, and that's
2 quite a bit of information to actually go through in a very
3 short period of time. And that was about 30 days ago when
4 we first received the package.

5 I would dare to say there's a lot of miners out
6 there that have not even had the opportunity to not only get
7 that, but read through that extensive amount of information.
8 And I think that what they're going to find is what they may
9 have heard in the press and in the other announcements, that
10 the rule is far more expansive than that. And I think
11 that's created a lot of problems and confusion out there,
12 what this rule was really about.

13 And I think it's a responsibility of the agency
14 as we go forward to help clear that up, because the
15 components that I just outlined in my initial presentation
16 are components that we have found to be affected by the
17 rule. The agency has made considerable mention about the
18 need to restore confidence and credibility to the program,
19 and my fear is after people really learn what this package
20 is about, that we may put a damper on that. And I think I
21 can explain that as I go through this whole process.

22 I would have to first say that following the
23 review by the Health and Safety specialists within the Mine
24 Workers, which involved Health and Safety representatives,
25 my staff in Washington, and safety committees that we went

1 out and met with and sent these proposals to, as well as our
2 legal department, who has been thoroughly reviewing the
3 rules, we came to the basic conclusion that the MSHA
4 proposal is fatally flawed, not in the best interests of
5 miners in its current form and found to be in need of major
6 change.

7 We also believe that MSHA needs to go back to
8 the drawing board and come out with a proposal that reflects
9 the kind of things that miners have wanted and needed for
10 many, many years and would reflect the findings of the
11 Federal Advisory Committee and would reflect the lawsuit
12 issues that are involved in the January 13, 2000, filing.
13 While the rules do contain improvements in areas sought by
14 the union and by miners, which is improvements on
15 single-shift sampling and improvements on plan verification,
16 those are unfortunately overshadowed by a lot of the changes
17 that have taken place in this rule that will be adverse to
18 miners.

19 And some changes actually, we believe, strip
20 away protections that miners currently have by the thrust of
21 the rule. And instead of increasing worker empowerment,
22 which has been a key issue of the mine workers and miners
23 for many, many years, we fail to see in this rule where it
24 accomplishes that. And actually, we have found by the
25 structure of the rule that may even reduce the empowerment

1 of workers as the rule is implemented. And that is a
2 serious concern by both miners and mine workers.

3 Many rules was drafted in a way that gives MSHA
4 extensive discretion on their application, leaving miners
5 without necessary legal procedures to challenge. And we're
6 going to go through a lot of these, starting with this
7 hearing today and throughout the hearing course, ending in
8 Salt Lake City. And this fuzzy enforcement, as I call it --
9 I try to give it a name -- can differ from the way we look
10 at this rule applying from one mine to another, from one
11 individual to another and, given the change of philosophy in
12 the government that we've been exposed to over the years,
13 where there is a greater interest to be a consultant than an
14 enforcer -- that has happened in past history -- this rule
15 could be very adverse to miners in the way that it's
16 actually applied.

17 I would caution miners to really look at the
18 discretionary features of this rule, as we, have and be
19 careful not to be lured into a rule structure that really
20 does give too much discretion to the government, that takes
21 away the decision-making of the miners or the legal licensed
22 miners to carry out the implementation of the rules, and
23 that's something that we have found, as far as the structure
24 of the rule, to be quite concerning.

25 There are obvious changes needed in the

1 proposal. First, MSHA needs to follow the recommendations
2 of the 1996 Federal Advisory Committee the Department of
3 Labor created for the very purpose of providing
4 recommendations to the government to be used to write the
5 rules from. As a member of that advisory committee, as I
6 looked through the proposals and the impact of those
7 proposals and went back and refreshed my memory on all the
8 recommendations that were developed by the advisory
9 committee, I found that, you know, those went in two
10 different directions. In many areas, the proposals and the
11 impact of the proposals do not follow the recommendations of
12 that Federal Advisory Committee.

13 Secondly, MSHA needs to implement the reforms
14 that the UMWA cited in the January 13th, 2000, lawsuit. And
15 we believe that the MSHA proposal just outright fails to
16 effectively do that. Third, restore the rules that were
17 eliminated during the revisions process. We think it's very
18 important to go back and fix those.

19 And fourth, eliminate those proposals that
20 undercut protections and rights that miners have under the
21 Act. And there are proposals that we believe in this rule
22 or by its application that will undercut protections and
23 rights miners currently have. I just want to just walk
24 through a history of the reform of the dust sampling
25 program, because I think it's important for that to be a

1 part of the record, and this has been a long path. I
2 remember I started working on reforming the dust program 25
3 years ago. And there's some folks in this room, I don't
4 know if they'll give their age away, but I think they were
5 with us back in the early days when we launched on a plan,
6 or launched a plan, rather, to bring real reform to the coal
7 mine sampling dust program.

8 And there was real reasons for that, because it
9 was a program that lacked credibility in the eyes of miners.
10 It was a program that lacked credibility in the eyes of
11 government. And it has been, over the years, a program that
12 has lacked credibility in the eyes of the general public for
13 a raft of different reasons.

14 The miners began demanding change to the program
15 after it was implemented following the passage of the '69
16 Mine Act. In the early 1970s, government reports were
17 starting to come out showing that the dust sampling program
18 was flawed, that it lacked credibility. There was a lot of
19 manipulation found, based on government investigations and
20 surveys. And that led to proposals to reform the dust
21 sampling program that were launched in 1997 and 1998, of
22 which hearings were held across the country like this. Many
23 miners came out, told about the conditions that were
24 existing in the nation's mines, about the manipulations
25 going on with the dust program, and had a list of reforms

1 that they had asked the government to act on.

2 On April 8th, 1980 -- and I won't, this is the
3 quick, down-and-dirty version of all of this -- but on April
4 8th, 1980, MSHA issued a proposal, or rather a final rule,
5 reforming some of the coal dust mining sampling program, but
6 some of the key components raised by the miners that were
7 not included in that final rule the government promised
8 action on. The miners had made issues of the operator
9 control of the program throughout those public hearings and
10 had asked the government to take responsibility. Miners had
11 clearly staked a claim in having a right to be a participant
12 in this whole process to make sure it was done right.

13 Miners asked that the government develop continuous
14 monitoring devices so that dust they were in could be
15 monitored constantly, that miners could actually see what
16 the dust levels were on a constant basis in coal mines.

17 And those things were not taken care of in that
18 proposal. But what the government did also do on April 8th,
19 1980, was promise the miners they without address two of
20 those issues. One was miner participation, and the second
21 was the development of continuous dust monitors. And from
22 those promises, the miners walked from those hearings
23 believing, and from that process, believing that the
24 government was going to act to take care of those.

25 Unfortunately, here we are in the year 2000, and

1 neither one of those are in place and neither one of those
2 are in this rule, despite what some kind of versions of what
3 may be in here. Those, based on our review, are not in the
4 rule. As the 1980s rolled along and the government backed
5 off enforcement of the coal dust standards in this country,
6 which I think has been documented, the problem again arose
7 to the public attention in the early '90s. There was
8 charges of mine operators conducting fraudulent dust
9 sampling. The famous AWC cases hit the national press. And
10 while the government was focused on that case, miners in the
11 union was focused on one that they really knew a lot about,
12 and that was what was really going in the sampling process
13 in coal mines.

14 And there was a lot of manipulation going on.
15 And from our viewpoint, a lot of these cases, there was no
16 need for the operator to blow the dust off the cassette,
17 because they weren't putting it on there to begin with.
18 That was one of the basic problems in terms of the sampling
19 process; that miners were being moved around, different
20 activities were taking place that would cause the dust
21 levels not to be reported accurately to the government.

22 And following those announcements, there were
23 hearings on Capitol Hill, and I believe there was three
24 congressional hearings that addressed these issues. And
25 when miners and miners' representatives talked, they talked

1 about those real problems at the coal mines that really
2 needed a fix. April 15th, 1991, there was a hearing in
3 Congress where these issues was laid out clear as a bell.
4 And on April 17th, two days later, the Secretary of Labor
5 announced the formulation of a task force, and that task
6 force was charged -- the three primary issues that task
7 force was charged with was looking for a government takeover
8 of the dust sampling program, increasing miners'
9 participation in the dust sampling process, and moving
10 forward with developing continuous monitors to continuously
11 monitor the dust.

12 Now, when miners heard the news, again, you
13 know, the hopes were raised that we were going to get things
14 that miners had wanted for years. Unfortunately, when the
15 smoke cleared and the agency task force issued its report,
16 those things was not to be had. As the story goes, dust
17 fraud again makes national attention, and this time with all
18 the criminal cases that was being plowed out of the coal
19 industry, where mine operators were caught red-handed
20 cheating on submitting fraudulent dust samples.

21 And over the course of, well, actually from 1990
22 to date, there have been over 160 individuals or companies
23 that have been criminally prosecuted for those activities,
24 and some of them were doing things as simple as going into
25 the basement of their office, taking a coal bucket, shaking

1 the dust up, putting some dust on the sample, and reporting
2 that to MSHA as if it came out of the coal mine. There was
3 a raft of issues that happened.

4 So in 1995, as miners pressed for reform again,
5 the Secretary of Labor then appointed an advisory committee.
6 And that advisory committee, which I served on, was charged
7 with taking a look at this whole dust program, developing a
8 reform, a holistic reform to this dust program and reining
9 it in. And we were specifically charged with coming up with
10 recommendations for standards to clean up the dust program
11 and eradicate pneumoconiosis in the nation's coal mines.
12 And it was important to do that.

13 Why? If you look at the current stats from
14 NIOSH, there is in the last 10-year period surveyed, 18,245
15 deaths in the United States attributed to the black lung
16 disease. That's about, by their current estimates, about
17 one miner dying every six hours. There is corruption that
18 has been reported out the wazoo with regard to dust sampling
19 dust fraud in coal mines. And there was a clear need, and I
20 could give you a lot of other statistics, but there was a
21 clear need to reform this, this program.

22 So the advisory committee issues its report on
23 November of 1996, which is over three years ago, and called
24 for basic reforms that included miners' participation, plan
25 verification, single full-shift sampling, reducing dust

1 levels in coal mines, continuous dust monitoring of the
2 dust, and a host of other issues. That package was not seen
3 as take one out or two out and that satisfies reform. There
4 was this holistic approach that was submitted to the
5 government for action.

6 Now, what we saw on the proposal that MSHA has
7 is there's been one plucked out here and one plucked out
8 here, but differently applied than what the advisory
9 committee had even recommended. On January 13th, 2000,
10 after waiting for years, over two decades for reform to take
11 place on key issues that miners have raised many, many years
12 ago, the union filed a lawsuit to force action. And four
13 things in that lawsuit was that MSHA takeover of the
14 operator dust sampling program, increased miner
15 participation in the program, continuous monitoring of the
16 dust with the continuous monitors we've been talking about
17 for two decades, and full-shift sampling of miners to have
18 sampling to represent the full exposure that they, that they
19 were exposed to.

20 On July 7th, when we were able to review the
21 proposals, we found that the proposal was totally deficient
22 when it comes to the advisory committee recommendations and
23 totally deficient when it came to the recommendations -- or
24 to the issues raised in the lawsuit filed on January 13th of
25 2000.

1 Miners have also contributed to the process in
2 many, many ways. At the public hearings in '78, as part of
3 the development of the union's position in 1991 and the task
4 force activities, at the 1996 Federal Advisory Committee
5 hearings, miners participated extensively in that. They
6 also had discussions with the agency regarding some of the
7 proposals that's before the agency today.

8 And as I read back through those discussions, I
9 was again disappointed to find that the recommendations made
10 by the miners to the government agency as they were
11 preparing this rule were not followed either. As a matter
12 of fact, the miners take some pretty clear and concise
13 positions. Those were rejected, as the rule shows, totally
14 out of hand. Now, during those meetings, which were held at
15 the Beckley Academy with safety committees from all over the
16 country, MSHA was able to walk through about three
17 proposals. One was on plan verification, one was on
18 replacing engineering controls with respiratory protection,
19 and the third was on continuous monitors.

20 And on the issue of plan verification, miners
21 raised a lot of specific concerns. And one was this whole
22 idea of having this 15-percent variance on production as
23 part of the plan verification process, of which I think the
24 record's quite clear that they did not -- they thought that
25 was too high, and some other issues that we'll get into

1 throughout the course of the hearings and testimony.

2 They also said, with regard to replacing
3 engineering controls with respiratory protection, the
4 message that came out of that meeting as I read the notes
5 was loud and clear -- "don't do that." And I think the
6 message from the mine workers for the last several years is
7 "don't do that." The message, as I see it, from the
8 advisory committee is, "don't do that." But that's one of
9 the provisions that I found in the rule, because it does do
10 that.

11 I'm going to go into more detail throughout some
12 of the hearings on some of the other issues that's raised in
13 the record -- I'm not going to spend a lot of time on those
14 today -- from that July 1998 meeting of which safety
15 committees had presented their issues. On July 24th, 2000,
16 the Secretary of Labor filed a motion with the U.S. Court of
17 Appeals urging the court to dismiss the UMWA lawsuit, which
18 was filed to force MSHA to issue four important regulations
19 the union and the miners were urging action on for years.
20 The NMWA lawsuit sought rules which, as I said, would
21 require the takeover of the operator sampling program, would
22 require continuous dust monitors, increase miner
23 participation, and would have miners' exposure sampled
24 through their full exposure.

25 As we read through that filing and saw the

1 agency position in that, in their attempt to dismiss a
2 lawsuit, that the proposed rule-making process addressed the
3 concerns, addressed with more specific standards the UMWA
4 seeks in these proceedings. In other words, we've addressed
5 it in the rule-making. There must be rules there somewhere
6 that affects those. Therefore, courts dismiss the case.

7 And we have filed motions Friday, as I was
8 leaving town, to dispute those findings, but I think it's a
9 fair question that we need to ask at this time, not only
10 with regard to the lawsuit, and given the fact that the
11 agency has said that these are addressed in this rule-making
12 and given what's been put out for the public consumption,
13 that miners, I think, do think that -- who haven't read the
14 rule -- that there is an MSHA takeover of the operator
15 program.

16 I think there is confusion. Miners think they
17 have these increased rights under the rules. I think there
18 is this confusion over what continuous monitoring is. And I
19 think there is confusion that miners believe that they will
20 be sampled on their compliance sampling for the full shift.
21 And we find none of those in the rules.

22 And what I would ask, at this point is to
23 clarify this. Where exactly in the proposed rule can we
24 find those four specific issues? And if you cite the
25 standard specifically, that would help clear the air.

1 MR. SCHELL: Joe, are you asking us to interrupt
2 your testimony?

3 MR. MAIN: Yeah, at this time, and I think it's,
4 because I think there's so much confusion on this with what
5 the agencies have said in the legal arena and what's been in
6 the press and what's in these rules. If the agency could
7 just point to the specific rule each one of these issues are
8 contained in.

9 MR. SCHELL: And repeat your four issues again,
10 Joe, just so I make sure --

11 MR. MAIN: The MSHA takeover of the operator
12 sampling program, if you could cite the specific rule where
13 that exists.

14 MR. SCHELL: Okay. What's the second, third,
15 and fourth?

16 MR. MAIN: If you want to go, we can go through
17 them one at a time.

18 MR. SCHELL: Could I get the four of them,
19 because maybe I can.

20 MR. MAIN: Well, if you could just answer them
21 as we go.

22 MR. SCHELL: Okay. Well, I don't have the --
23 excuse me a minute, Joe -- I'm going to have to wrestle with
24 this thing -- I don't have the document in front of me and I
25 would ask staff to try to identify the specific paragraph

1 and will give that to you. I can tell you the takeover of
2 MSHA sampling -- that references the reliance of the agency
3 on compliance sampling by operators. And this proposal does
4 eliminate all reliance on operator sampling for compliance
5 purposes. That includes verification sampling. That
6 includes compliance sampling. That includes abatement
7 sampling. That includes sampling to establish the reduced
8 quartz standard. And that includes sampling to ensure that
9 the Part 90 miners working in a low-dust environment.

10 And I will ask staff to identify specifically
11 what page that's listed on in the document for you.

12 MR. MAIN: But what my specific point, Ron, is
13 where in the rule can a miner point to that shows that there
14 is this MSHA takeover of the operator sampling program?

15 MR. SCHELL: And I would say that that portion
16 of the rule that eliminates the requirement for operator
17 sampling, that eliminates our reliance on operator sampling
18 for compliance purposes. In the preamble, we have stated
19 that we will conduct bimonthly sampling for compliance.
20 There is a provision in the rule itself that specifically
21 states that MSHA will do the verification sampling, and in
22 the preamble it indicates that we will do the abatement
23 sampling and the Part 90 sampling.

24 If you're looking for something in the rule,
25 Joe, you won't find it. The rule is written to govern the

1 conduct of the operator. The rule isn't written to govern
2 MSHA's conduct. What we have said in the preamble is that
3 MSHA will develop a written policy that will outline
4 specifically how MSHA will conduct that sampling.

5 MR. MAIN: Your answer is pretty consistent with
6 what our finding is. We found no provision in the rule that
7 has an MSHA takeover of the operator sampling program. It
8 has been reduced to a policy intent of the agency, which, as
9 we view it, is not legally enforceable and can be changed
10 with policy decisions and could be directly affected with
11 funding cuts down the road when Congress decides to cut back
12 on the funding of the agency. But there is, we found no
13 proposal that accomplished a rule that miners could rely on
14 that did that.

15 MR. SCHELL: Joe, to a large extent that is true
16 that there was no discussion of MSHA sampling in the rule
17 except for the verification sampling. You are correct. The
18 other parts of it are outlined in the preamble where MSHA
19 says it will develop a policy.

20 MR. MAIN: I think it's important for the miners
21 to know that, and I would encourage the agency to get that
22 message out, because we have encountered different people
23 who think that there's actually a rule here that MSHA has
24 taken over the program. And there is this misunderstanding
25 about what policy is and how weak that is in terms of, I

1 mean as compared to a rule, that it provides no guarantee
2 for miners.

3 MR. NICHOLS: Is it your point, Joe, that it
4 should be included in the rule?

5 MR. MAIN: Well, I think my points are going to
6 be made in terms of three things. One is that the Federal
7 Advisory Committee laid out a very clear script for what
8 they believe should take -- should be implemented whenever
9 there's a takeover, and we believe that that script that's
10 contained in those regulations are followed. The second
11 thing is that as I went through the rule and found all of
12 these standards that miners can now point to know when,
13 what, where they could expect to have sampling, those
14 provisions had been totally eliminated. And I think that
15 miners should be very wary of trading a standard by which
16 they can see for one that may be neutered to its bitter end,
17 because it's not even a standard and there's no guarantee,
18 Marvin.

19 And I think the funding issue, which was
20 recognized by the advisory committee, as the agency may lose
21 money, is a critical issue here that should have been
22 addressed by the proposed rule. There was a lot of time
23 spent on that. But we'll have some more specific
24 recommendations. But as it now stands, I think this is a
25 bad proposal in its current form. And legally, our lawyers

1 have looked at it and said that there's no legal standing
2 for miners to expect those as guarantees. And I'll get into
3 the other effects of that in just a second.

4 With regard to the miners' participation, in the
5 specific rule is there increased miner participation rights
6 that we have missed that's in the proposed rule?

7 MR. SCHELL: Yes, Joe, in this sense. That the
8 -- MSHA will be conducting verification sampling. Miners
9 will be entitled to 103(f) rights when we conduct that
10 sampling. MSHA will be conducting compliance sampling.
11 Miners will be entitled to 103(f) rights when we do that.
12 MSHA will be conducting abatement sampling. Miners will be
13 entitled to 103(f) rights when they're doing that. In the
14 past, they clearly haven't been entitled to 103(f) rights
15 when we did abatement sampling because, as you know, that
16 was done by the operator.

17 There is no place in the rule where that is
18 mentioned, because the agency's position is that that's
19 already in the statute under 103(f) and the statute has more
20 influence than the regs. So what we're saying is we have
21 interpreted 103(f) to include the right of a miner to
22 participate anytime MSHA conducts sampling.

23 MR. MAIN: And to that end, it's safe to say
24 that the inspection activities other than the abatement
25 sample has been rights that the miners have had since '77 as

1 far as inspection rights, as far as compliance sampling
2 goes.

3 MR. SCHELL: As far as compliance sampling.

4 MR. MAIN: Okay.

5 MR. SCHELL: Abatement sampling, as you know, we
6 haven't done it the way we're proposing to do it in this
7 rule.

8 MR. MAIN: Well, and it would be attached to the
9 103(f) walk-around. The plan verification right that you
10 mentioned, it is clear that the industry is on the record to
11 challenge that. They made it quite clear at the advisory
12 committee and they issued a dissenting opinion that made
13 note that they didn't believe that the 103(f) walk-around
14 rights would be applied to a pre-noticed inspection, of
15 which the plan verification is a pre-noticed inspection by
16 its design.

17 And knowing that MSHA does include provisions
18 all the time out of the statute into the regulations, that
19 having not put that there and stood the test of time to be a
20 valid rule leaves that back at a lesser legal standard. And
21 I'd just remind you to look at some of the discussions that
22 was in the record on plan verification -- or on the single
23 sample policies that was, and actions that was taking place
24 there that were forced to go through at the end of the day
25 through the rule-making process, that, as we seen it, when

1 we looked at the rule itself, there is no miner
2 participation rights included in that rule that guarantees
3 the miner any rights beyond what they have currently under
4 rule 103(f). And the one right that the agency is claiming
5 with regard to plan verification is not tied up in a legally
6 sound way that would be more protective.

7 With regard to continuous dust monitors, we
8 found no proposal, or proposed rule that would require
9 continuous dust monitors.

10 MR. SCHELL: That is correct, Joe. We clearly
11 asked for comments on continuous monitors. Right now, the
12 position of the agency is the technology doesn't exist to be
13 able to write that rule. But we all would be -- I think,
14 industry, labor, and government have all expressed a
15 preference to go to continuous monitoring. Right now, we
16 don't see the technology there to be able to write a rule to
17 require it.

18 MR. MAIN: This is an issue of which I'm not
19 going to spend a lot of time on today, but I will at one
20 future hearing, since I've been so heavily involved in this.
21 I totally disagree with that. I think the agency, after 20
22 years of work, are at the finish line where they're in a
23 position to write a rule. If they're ever going to require
24 it in mines, they got to get a rule, they've done enough
25 work to get a position there that those devices can

1 technically work.

2 And having promised the miners that 20 years ago
3 and standing here in the year 2000 and saying from the
4 agency, well, one of these days we may get there,
5 particularly after testing was abandoned last year, which is
6 another discussion we'll have later, I think is just, it's
7 the kind of things that undercut the credibility of the
8 government, to get that close and then make a decision not
9 to do that.

10 MR. NICHOLS: Are you saying the technology is
11 there now?

12 MR. MAIN: I'm saying that given the framework
13 of the Mine Act, given the technological development of
14 continuous monitors, that the agency is in a clear position
15 to issue a standard requiring the use of continuous dust
16 monitors in coal mines, yes.

17 MR. SCHELL: Well, those are the kind of
18 comments that we're soliciting in this rule-making, Joe.

19 MR. MAIN: And I was disappointed to see the
20 different positions taken by the government as I try to
21 figure out where the government's at. But I think the
22 government, really, when you get down to the nuts and bolts,
23 has the same line of thinking that I do, at least the papers
24 I'm going to be putting in the record and will be talking
25 about at some of the other hearings when there's more time

1 to do that.

2 And the fourth issue was the miners' exposure
3 for full shifts. As I look at the compliance dust standard,
4 which is, I think, the key that miners are looking at in
5 terms of their exposure and controlling their exposure in
6 coal mines, versus the method that we have now, and I look
7 at the way that's applied, there is no full-shift sampling
8 of miners during that compliance dust sampling. Did I miss
9 something there?

10 MR. SCHELL: No. You're correct, but let me put
11 it in context, Joe. One of the concerns that we've had and
12 I think that you've had over the years is when we conduct
13 compliance sampling, a lot of times that compliance sampling
14 isn't representative of what miners see on a day-to-day
15 basis. So that the whole, and you're right when you started
16 out saying you really have to look at the rule in total
17 context and not just pull out parts of it. But the major
18 concern of the agency and I think of the mine workers is, on
19 average, every mine operates about 400 shifts a year. And
20 our goal, and I think everybody's goal, is to ensure that we
21 have compliance on every shift, not just on the shifts that
22 sampling is conducted.

23 So the way this rule is structured is -- the way
24 we wanted to achieve that is to have mine operators develop
25 comprehensive dust plans and then verify those plans with

1 only the controls in the plan in place, and verify it at the
2 upper limits of production the way the advisory committee
3 stated. And our theory being that if you have a
4 well-designed plan that's designed to control the dust with
5 the controls that are listed in the plan and at high
6 production, you're going to protect miners, especially if
7 you add to that the requirement that the operator has to do
8 an on-shift to make sure those controls are in place every -
9 - before you start production, every shift.

10 So if you take a good plan, a plan that's
11 checked every day, and then if you go out and periodically
12 check that plan to see if you have reason to believe it's
13 changed and you use single sample enforcement so that you're
14 not masking the high exposures with the low exposures, you,
15 we believe, will achieve what we're trying to seek. And
16 that's protection for the miners on every shift.

17 Now, to get to your specific question, Joe, in
18 this proposal, we have said that the bimonthly sampling by
19 MSHA, we believe, could be conducted for eight hours, and
20 that would give us an indication as to whether or not that
21 plan continues to protect miners. Now, that eight hours is
22 the eight hours we choose to sample. It isn't -- currently,
23 it's eight hours portal to portal, which means that you
24 sample going in, you sample on the shift, and you bring the
25 pump out.

1 We're talking now about 480 minutes. And MSHA
2 will decide when to sample, so we may not sample in and out.
3 We'll sample at the face. For example, if it's an hour to
4 get to the face, eight hours of production, an hour out,
5 we'll sample the eight hours that production is occurring.
6 What we have asked for in this proposal -- let me back a
7 little bit, one other point. Verification sampling is full-
8 shift sampling. It is not eight hours in this rule.

9 Abatement sampling is full-shift sampling. So
10 if the operator goes out, we sample for the full shift to
11 go, to bring them back into compliance. We're saying that
12 the bimonthly sampling is eight hours, 480 minutes. MSHA
13 decides when to sample. We have specifically asked for
14 comments from the public on whether the compliance sampling
15 should be full shift.

16 However, right now our belief is that 480
17 minutes, with MSHA deciding when they're going to sample
18 would be sufficient for us to make a judgment as to whether
19 that plan continues to be adequate to protect miners or
20 whether that plan should be re-verified.

21 MR. MAIN: With regard to the plan verification,
22 I think there's some, as I pointed out, there's some
23 improvements in that. There are still some problem areas
24 that we're going to be addressing all the way through, and
25 the plan -- or the sampling mode, one questions why it's

1 used there and not used as part of the compliance sampling
2 of coal miners on a normal basis, because the ones that
3 they're going to be most involved with in terms of the
4 individual monitors and work areas is going to be the
5 compliance sampling, and that is 480 minute.

6 And a miner -- and one of the points I made, the
7 worker empowerment and this -- there is all these decisions
8 made by inspectors in the government, at least all through
9 this proposal, that we hopefully before the end of the
10 hearing process lay those out, that gives us great trouble
11 with all the discretion without miners having a voice, which
12 is something that was sought 20 years ago.

13 I just want to walk through it. With regard to
14 the plan verification in the single sample process and with
15 both the improvements and the shortcomings in those, this
16 proposal does a lot more than that. And as I pointed out,
17 it eliminates the entire compliance requirements of Part 70
18 and Part 90 on dust sampling compliance. Miners are hostage
19 to what the government says that they will do for them, as
20 opposed to having a rule, which they currently have.

21 The proposal dramatically reduces -- and the way
22 we figure the calculations, the amount of compliance
23 sampling that will take place in coal mines will be reduced
24 83 percent as far as the number of shifts sampled, compared
25 to both the operator and MSHA sampling today. And what the

1 Federal Advisory Committee recommended was that when the
2 MSHA takes over the program, that there be sufficient
3 funding and resources to carry that out, but also at least
4 that done by MSHA and the operator. And I think that far
5 undercuts that.

6 For out-by work areas of coal mines, they would
7 get one compliance sample a year. And we think that's
8 outrageous by any, any standards. And I think when the
9 miners met with your folks on July 28th, 1998, they raised
10 that specific point that the current sampling, which is only
11 bimonthly, is far too infrequent for out-by areas of coal
12 mines, and now reducing that to one, and none of these are
13 legally guaranteed, is a major problem.

14 The proposal also does some other things with
15 regard to the dust exposure in coal mines. And one of the
16 things we had a difficulty figuring out, because there's so
17 many different schemes and levels established in this rule
18 that has changed the whole landscape, and miners have to
19 look carefully at what MSHA's doing as to what the time of
20 the sample would be, what the exposure would be. But I
21 think it's safe to say, if you look at the numbers in the
22 current rule, that across the board, those numbers have been
23 increased.

24 But in some areas, miners who got this proposal
25 didn't know that, because the number that we found, only

1 after we asked questions and got a answer to a formula
2 that's contained back in the preamble. Well, the 70.100
3 still says 2 milligram is a compliance level and 1 milligram
4 for out-by and Part 90 miners.

5 Under this proposal, miners would actually have,
6 for compliance purposes, the dust levels jacked up to 2.33
7 would be the new compliance citation level. And out-by
8 miners and Part 90 miners would be 1.26. And that is an
9 issue that was opposed by the miners, opposed by mine
10 workers, and opposed by the Federal Advisory Committee. And
11 it's based on jacking up the dust levels to make up for this
12 uncertainty that's been described. But instead of taking
13 the uncertainty to protect the miners, which would be to
14 lower that, the uncertainty went the other way and jacked it
15 up to where we now do have these standards.

16 And I think that it was wrong for the agency to
17 be intending on issuing that rule without giving any public
18 notice about that standard. And unless you're out telling
19 the miners, and the only ones that know about is the ones
20 we've told so far that those are the new compliance levels.
21 The proposal also, for longwalls does increase up to 4
22 milligrams on longwall faces, where MSHA would approve a
23 plan to use respiratory protection. And as a member of the
24 Federal Advisory Committee and a longstanding person that's
25 dealt with coal dust reform, I have to be honest with you

1 folks, I fail to see where raising the dust levels in coal
2 mines gets us to eradicating pneumoconiosis. I just, you
3 know, just, the logic just don't fit in.

4 And as I've said, these are propositions that
5 the miners have opposed, that the mine workers have opposed,
6 and that the Federal Advisory Committee has opposed,
7 straightforward. And again, this is an area where what
8 miners called for going back to the reductions, they called
9 for increased dust sampling in coal mines consistently
10 across the years. And what they now have is, as far as any
11 kind of standard decrease, and that has no legal guarantee,
12 and it also permits mine operators under this proposal to
13 change out engineering controls with administrative
14 controls. And we're still going through that proposal,
15 because of two reasons.

16 One is its conflict with the Act. And secondly,
17 the process, which is so, again, fuzzy, about how this whole
18 proposal is going to be implemented as to what rights miners
19 have. And we've looked at both the respiratory protection
20 control and the administrative controls. We see miners'
21 rights actually ripped out of the process. Right now, when
22 a longwall mine operator exceeds 2 milligram of dust,
23 operator -- or MSHA is obligated to cite. The miner has a
24 right in that legal process under 105 of the Act. They can
25 challenge the abatement time, they can challenge the

1 modifications. Under this new proposal, that doesn't even
2 trigger now until 4 milligram, as I read it. There is no
3 legal procedures of challenge.

4 And I think, you know, representing miners, I
5 would have to say that is not a good standard for miners.
6 It is contrary to the Mine Act, contrary to what miners have
7 said, what the union has said and contrary to the findings
8 of the Federal Advisory Committee. Despite the report of
9 takeovers, I've pointed out earlier there is no takeover in
10 this rule. There's elimination, as I think you've pretty
11 well characterized, Ron, on the operator sampling with MSHA
12 doing whatever sampling by policy they intend to do.

13 And despite references of increased miners'
14 participation, in the proposed rule, we do not see any
15 increased miner participation. I understand your arguments
16 on 103(f). That's what they had back in 1997 -- or 1977 --
17 and I hope the agency understands the clear dilemma here
18 with what the operators have already challenged with regard
19 to the plan verification, that that's in a very weak
20 position. Although the rule does call for single,
21 full-shift sampling, what we envisioned was single,
22 full-shift sampling, not a piece here, a piece there. With
23 the compliance provisions, which is what we think is going
24 to be the most relied on, whatever they may be, one a year
25 for out-by or six a year, which is far too less, to be

1 exempt from that full-shift sampling.

2 And again, we don't have control over when that
3 inspector's going to make that decision. If they've got
4 their 40 hours close by, Ron -- and I'll tell you, we've
5 been in that problem many, many times -- and it's more
6 convenient for that inspection to take place --

7 MR. SCHELL: Joe, you said something I didn't
8 understand. You said that compliance sampling would be
9 exempt from single sample measurements?

10 MR. MAIN: No, from the full-shift measure.

11 MR. SCHELL: Oh, okay. I'm sorry.

12 MR. NICHOLS: Why don't we back up and talk
13 about the use of personal protective equipment, since we're
14 having this back and forth. Now, you understand that the
15 use of personal protective equipment would only, would be
16 limited to the longwalls and only those folks working
17 downwind of the sheer operator. And only after the operator
18 had exhausted all engineering controls and requested an
19 allowance from the administrator.

20 MR. MAIN: Yes, I understand that.

21 MR. NICHOLS: For that limited --

22 MR. MAIN: And let me give you a dose of
23 reality, Marvin. I don't know if you was with us when we
24 got into the dog fights in Alabama over dust levels. And I
25 remember the operator claiming, we've done all we can,

1 you've got to give us respirators, you got to let us use
2 those to comply with the law. I've been in so many of those
3 dog fights over the years, had I believed every one of those
4 that came my way, we would not have the kind of controls
5 that we have today.

6 And it don't take a rocket scientist to figure
7 out how policy decisions are made and how quickly any mine
8 operator could make that claim, and there'd be a weak-kneed
9 policy decision. And as far as policy decisions, you know,
10 I could go through a slew of them here where we would never
11 let a two-entry mining system be used with a bleederless gob
12 dumping gas along the tailgate. I mean, I heard that said
13 many, many years ago, only to find Willow Creek two years
14 ago with that exact mining system.

15 And you've got to understand where miners come
16 from here, Marvin. We can't -- we understand that the
17 application of that rule means that this is going to happen.
18 There's going to be a lot of operators who have claimed in
19 the past they can't do it and they're going to still claim
20 that today. And if those mines where there's no miners'
21 representative to stand up and say, wait a minute, we, you
22 know, we've been through these policies. It's, you know,
23 it's pretty obvious.

24 MR. NICHOLS: But as I recall Jim Walters, that
25 was a type of administrative control of switching people

1 out. Is that right?

2 MR. MAIN: What they wanted, Marvin, was
3 Airstream helmets. That was the first demand that they
4 made. And that was a demand that was refused by the miners
5 and the union.

6 MR. NICHOLS: Is it your opinion that, that all,
7 all areas of coal mining can be brought into compliance by
8 engineering controls?

9 MR. MAIN: It is my opinion that the Mine Act
10 has works successfully.

11 MR. NICHOLS: No, that's not my question.

12 MR. MAIN: Well, I'm going to answer the
13 question the way that I think that it needs to be answered
14 for the benefit of miners. I think that the Mine Act has
15 been successfully applied where the agency has made a
16 decision to apply that. I believe that when a mine operator
17 exceeds 2 milligrams, there's a citation that should go on
18 that, on that mine to control the application of engineering
19 controls. And that operator is under obligation during that
20 process to bring that mine back into control, as opposed to
21 saying we're going to make a decision here, there is no
22 engineering controls that -- and this is, because this is
23 the basis of that whole issue -- there's no engineering
24 controls that can be applied right now, we're going to go to
25 Airstream helmets.

1 I do not agree with that. I think it's contrary
2 to the Mine Act. I think the process in place right now
3 will take care of it. As a matter of fact, if you let me go
4 a step further, when this whole debate started, I started
5 getting interested in how this whole system was working.
6 And I was told, I think by Ron Schell one day that, you
7 know, Joe, if an operator has a quality respiratory program
8 in a mine and when MSHA goes to cite them they get an S&S
9 citation, if they have a quality respiration protection
10 program in place.

11 I pulled the paper and found that in almost 98
12 percent of the cases, the operators was getting cited with
13 S&S violations. And I stepped back and said, what's going
14 on here? There's a request to use respiratory protection to
15 replace engineering controls, but the industry isn't doing a
16 quality job here just to get out of a citation. And the
17 second thing, I think there's a benefit there where an
18 operator does, in good faith, apply the kind of respiratory
19 protections they should be anyway, that there's a lot of
20 leniency in the system, but it still keeps the enforcement
21 paper on them.

22 MR. NICHOLS: But I just want the record to be
23 clear that we're not talking about putting Airstream helmets
24 or personal protective equipment on people other than one
25 small area of the longwalls where they've exhausted all

1 engineering controls.

2 MR. MAIN: We're talking about an issue that has
3 been very controversial where there has been attempts in the
4 past to do that very thing that does place miners at higher
5 risk of dust exposure. And those miners who are currently
6 wearing respiratory protections that we're describing today,
7 those Airstream helmets, would have their dust levels
8 increased by this standard.

9 And I should remind the panel here that there
10 has been a controversy over this very respiratory protection
11 that you have identified as the ones that replace
12 engineering controls, when it's not working proficiently out
13 there right now. As a matter of fact, there has been
14 complaints made to both MSHA and NIOSH to rectify this
15 problem where miners are taking an approved device, which
16 cannot work in its current form, as I've been told by both
17 labor and industry, because the darn thing fogs up, they
18 can't see, because the filtering system that's used in
19 doesn't permit it to be used well.

20 Miners are even taking out, from what I
21 understand, the approved filter and putting socks and other
22 devices in just to get the thing to work. And that's,
23 unless I'm wrong, I mean this is the only Rickell-3M units
24 that I'm aware of that you have identified in here that was
25 faulty before you ever issued the rule. And that bothers

1 us. And I've had miners complain, like I say, and the
2 operators have complained.

3 If I could proceed. I don't want you to hold up
4 the other folks here. I'm just going to proceed through
5 here real quick. I'll be back again at the end of the
6 session to have any more discussion that you care to have,
7 but as I pointed out also, although the, there's been
8 discussion about continuous monitors, there's none in the
9 rule. The proposed plan, the plan verification program is a
10 bit on the complex side, and we're still sorting through it
11 to figure out how that thing's actually going to work in
12 real life.

13 And I think some of the miners have already had
14 some experience on some models that they maybe testified
15 about throughout the hearings. The administrative controls
16 issue needs a lot more discussion, because it is again
17 replacing engineering control with administrative controls.
18 On the Federal Advisory Committee findings, the Federal
19 Advisory Committee called for lowering dust levels in the
20 nation's coal mines. The MSHA proposal increases those dust
21 exposure levels.

22 And there are specifics on each one of those
23 that we will be putting in the record. The committee called
24 for increased compliance sampling. The MSHA proposals
25 substantially decrease the sampling. The committee called

1 for an effective MSHA takeover of the mine operator
2 compliance program. The MSHA proposal basically eliminated
3 that and converted everything into policy.

4 The committee called for a major expansion of
5 miners and the representatives participation in the whole
6 respirable dust program, training and certifying the miners'
7 representatives, having miners' representatives involved in
8 dust sampling conducted by the operator for plan
9 verification, which we have always said and which the
10 advisory committee has said that needs to be continued as
11 part of this process.

12 We did support those recommendations of the
13 advisory committee. The committee called for miners to be
14 sampled for the full shift. I think there was a clear
15 envisioning that we intended not, over here on this type of,
16 just on this type, that basically sampling miners for full
17 shifts, particularly when it came to compliance sampling. I
18 mean, it was clear in my mind that that's what we were
19 talking about -- and the MSHA proposal fails to do that,
20 particularly in one of the biggest chunks of sampling,
21 whatever it may be that were taking place, which is
22 compliance sampling.

23 Now, the committee called for environmental
24 controls to continue to be the method to control coal mine
25 dust, not replaced by respiratory protections. And there

1 are some other areas in the advisory committee proposal that
2 we will be addressing throughout the course of the hearings.
3 I'm going to, like I say, I'll come back at the end of the,
4 when everybody's finished and go into more detail on some of
5 these proposals that -- as you can see, this is not a simple
6 single shift -- single, full-shift sample rule and plan
7 verification rule.

8 There is a whole lot of other things involved in
9 here that have a direct impact on miners. There's a lot of
10 standards that's no longer there for miners to point out,
11 and there is a lot of construction of this new document that
12 puts everything back as, hey, miners, the government will
13 tell you what you can expect, and we hold that discretion
14 for our own. As for miners, I think that's a bad deal for
15 them to buy into given the policy actions that we've seen
16 out of the agency over the years.

17 And as I pointed out, we think the proposal, in
18 its current form, is fatally flawed. You need to go back to
19 the drawing board. You need to listen to the issues that
20 the miners have raised consistently, redraft the proposal,
21 bring it back, taking care of the issues in the UMWA
22 lawsuit, following the clear direction of the Federal
23 Advisory Committee and coming up with a proposal that really
24 enhances overall miners' protections on coal mine -- in the
25 coal mine dust health and safety program, but which we think

1 in its current form just fails to do. Thank you very much.

2 MR. NICHOLS: Thank you, Joe. Yeah, why don't
3 we take a short break, but let's be back at 10 o'clock.

4 (There was a short recess.)

5 MR. NICHOLS: Let's get started back. We've
6 been told a number of people that it's hard to hear in the
7 back of the room. We've talked to the folks here, and I
8 guess this is about all the volume we can get out of the
9 system, so I would ask that the presenters speak as loud as
10 they can. Can you hear me in the back now? Well, I'm
11 afraid this is probably going to be the best we can do. If
12 you folks in the back want to move your chairs up front, you
13 could do that. We've got some room over to my right here
14 and some to my left.

15 Okay. Let's get started back. Our next
16 presenter will be Chris Ballard with the United Mine Workers
17 of America.

18 MR. BALLARD: My name's Chris Ballard. I'm a
19 safety committeeman with Local 1501, District 31, United
20 Mine Workers. In opening my comments, I would like to first
21 voice my displeasure with the proposed changes in the MSHA's
22 respirable dust regulations. Miners have been fighting for
23 many years to obtain laws and standards that are currently
24 in place. These laws and standards, while better than
25 nothing and have decreased respirable dust in coal mines,

1 still leave an enormous amount of room for improvement. In
2 my opinion, the proposed changes in the existing dust
3 regulations are a step backwards and not what coal miners
4 need or are asking for.

5 First of all, why would we want to reduce the
6 number of samples taken to verify if the mine ventilation
7 plan is actually doing its job? I believe that the samples
8 being currently taken from the mine operators should be kept
9 in place to aid in the credibility of these tests, as
10 miners' representatives should be allowed by law to observe
11 and/or assist in the entire dust sampling process at no loss
12 of pay to the miner. Using this method of testing will
13 ensure the accuracy of each sample to the satisfaction of
14 all parties. And after all, isn't that what we should all
15 be interested in achieving?

16 Also, MSHA should continue to do their testing
17 as they currently are doing. They should not be using any
18 type of schedule as suggested under the new proposed
19 regulations. Random unscheduled sampling, if included in
20 the new rule, will result in the most actual and true
21 samples of respirable dust that miners are exposed to on a
22 daily basis. The length of time a coal miner is exposed to
23 respirable dust has dramatically increased over the past
24 several years.

25 Miners are now being forced to work 10- and

1 12-hour shifts instead of the traditional eight-hour shifts.
2 Along with this, production of coal has increased due to
3 advances in technology in mining methods. Everyone knows
4 when coal, when you cut coal faster and cut more tonnage per
5 shift, this also increases the amount of respirable coal
6 dust generated. So why doesn't the new rule require that
7 all samples be taken for the entire length of a working
8 shift and during full production, not just an average?

9 This new rule also increases the amount of
10 respirable dust being allowed on a longwall face. The new
11 rule, depending on the interpretation, would at least double
12 the allowable dust concentrations from 2 to 4 milligrams
13 with the use of respirators or air helmets. This is clearly
14 a step backward in MSHA's ability to require a reduction of
15 coal dust and eliminate pneumoconiosis. With the technology
16 available today, engineering controls can take care of
17 respirable dust at a level below 2 milligrams if they are
18 used and maintained in the conditions which they were
19 designed.

20 Clearly, an increase in these numbers is not
21 needed. No one here wants to see their family members
22 exposed to twice as much respirable dust as is now allowed
23 by law. Also consider the added danger this increase in
24 dust, if allowed to be suspended in the air course, would
25 create if a face ignition would occur. One of the best

1 solutions of dust sampling would be a continuous monitoring
2 system. If a monitor were mounted directly to the mining
3 machine, a true and accurate sample could be obtained.
4 These testing devices are available and should be
5 implemented into the new rule, as the advisory committee
6 recommends.

7 I believe that MSHA should go back to the
8 drawing board and revise the proposed dust regulations. I
9 believe that MSHA should take a closer look at the advisory
10 commission's recommendations and develop a new set of rules
11 using these recommendations as a strict guideline. I also
12 believe that MSHA should establish a new respirable dust
13 rule that truly minimizes a coal miner's exposure to
14 respirable dust and stops coal miners from dying of black
15 lung. Thank you.

16 MR. NICHOLS: Thank you, Chris.

17 MR. SCHELL: Mr. Ballard, just following up on
18 Joe Main's comment that we try to explain things to you, one
19 of the things, one of the major pluses of this rule that we
20 see from the government -- and the reason I'm stating it
21 that way is because we need your input as we move to a final
22 rule -- one of the major things that we're doing is this
23 plan verification. And that really is sampling under very
24 stringent conditions. The mine operator has to set the
25 parameters that they have in their plan and that's all. And

1 they have to be no more than 15 percent about what they say
2 in their plan.

3 They have to reach a level of production that's
4 high. And if you read the rule, we know they're not going
5 to reach that level of production every day we verify,
6 because of just the reasons that you guys know; some days
7 you get high production, some days you get low production.
8 So we're not going to be out there sampling just one, two or
9 three or four shifts to verify a plan. We're going to be
10 going back multiple times.

11 But the concept is that we want that plan tested
12 for the entire shift at just what that operator says he's
13 going to put in his plan for the entire shift. Because if
14 we think we're confident that that plan works and he checks
15 that plan every shift, miners are going to be protected.
16 Our concern with the bimonthly sampling and with the
17 operator sampling -- and Joe raised this too -- a lot of
18 times, that sampling isn't representative of what you see
19 every day. Okay. An operator could have more controls in
20 place. An operator could cut back production.

21 So our key is we want a plan that we have
22 verified. Okay. We want that plan checked every production
23 shift to make certain that those controls are working and
24 you guys are comfortable that those controls are working.
25 We see bimonthly sampling as a check on that process, but we

1 don't think every time we do bimonthly sampling we're going
2 to see the conditions under which that plan was verified.

3 So we're putting an enormous amount of our
4 effort into getting those plans and making certain that
5 those plans work and making certain that those plans are in
6 place every day and every shift. Again, our goal. We want
7 miners protected on 400 shifts a year on average, not on the
8 30 where sampling occurs.

9 MR. NICHOLS: And I would just say again that
10 the, that the consideration for personal protective
11 equipment will be only on longwalls for people that are
12 working downwind of the sheer operator. And no
13 consideration will be given to the use of personal
14 protective equipment until MSHA has made a determination
15 that all engineering controls have been exhausted. It's,
16 it's very restrictive, a consideration for the use of
17 personal protective equipment. Okay, our next presenter
18 will be Jim Taylor, with the United Mine Workers of America.

19 MR. TAYLOR: Good morning. I hope everybody can
20 hear me, because back there it's really tough. And we were
21 talking about the regulatory controls for the air helmets,
22 okay. Here's the problem. NIOSH come up with a different
23 kind of filter. As soon as they come into play, the guys
24 start coming to us and they say, they tear, can't see,
25 fogging up all the time. That hasn't changed. They're

1 either replacing the -- and we talk. I mean when we get the
2 safety committees together, we talk what's going on to other
3 miners. They are removing these filters and they are
4 sticking socks over top of them. Sliding them in there
5 inside that filter to take away the condensation steaming up
6 so they can see.

7 So that really has to be considered in here
8 before anything can be granted. You may have everything in
9 control, but if people's not using it, it's no good to us.
10 The same way with the hearing protection. We have cleaning
11 plants out there that are loud as bass drums. And what do
12 we do? We give them ear muffs, and that puts them in
13 compliance. And this is what we're getting into on this.

14 The air helmet is a good thing if it's used and
15 you can see through it and the filters are properly -- when
16 they come to us, we called 3M and we said, we want the old
17 filters back, guys are raising hell about this. They said
18 "there is no old filter anymore. Discontinued according to
19 NIOSH. This is NIOSH's new standard. This is what we have
20 to sell you." But it doesn't work. So now guys aren't
21 wearing them. They're wearing the old paper respirators
22 that are less protective than what we have.

23 So we've got to make things work here before we
24 start giving -- I know it may be a long-term down the road
25 for 4 milligram, and like you see, all engineering controls

1 would have to be exhausted, but hopefully that would take
2 care of it. If they have exhausted all engineering
3 controls, we shouldn't have to get into an air helmet to
4 allow them the same as we do with the hearing protection.
5 And another thing I'd like to ask about is we didn't hear
6 real good back there, so maybe a clarification.

7 MR. SCHELL: If you take that microphone off and
8 put it up to your mouth. Take it on the stand.

9 MR. TAYLOR: Oh, I can talk loud. People will
10 hear me. But what I want to ask about is if MSHA uses
11 certified dust people to run these dust samples, then, and
12 they don't have an AR card, then we have no walk-around
13 rights, correct?

14 MR. SCHELL: No. That would still be
15 enforcement action.

16 MR. TAYLOR: Without an AR card, and they're
17 just certified only in dust?

18 MR. SCHELL: Yes, but that would still, that
19 person might not be able to issue a citation, but I would
20 say that's still enforcement activity, and I'm looking at
21 some of the managers who are here, but I've never heard of
22 us not allowing walk-around rights when we're doing dust
23 sampling, even if it's a non-AR -- we'll check on it, Jim,
24 but our position would be that the miners' representative
25 should have 103(f) rights when we're doing dust sampling.

1 MR. TAYLOR: Sure would appreciate that. Thank
2 you.

3 MR. SCHELL: If I could comment on the Airstream
4 helmet. We are aware that 3M is working on that. The
5 proposal does say to use pappers (phonetic) they have to be
6 approved devices. So, you know, if it wasn't approved, it
7 couldn't be used.

8 MR. NICHOLS: Well, in addition to that, I mean,
9 a miner can't be just handed a personal, piece of personal
10 protective equipment, that the company would need a good
11 maintenance program that is in conformance with --

12 MR. TAYLOR: Well, we got a good maintenance
13 program. They take care -- it's the filter. It's the
14 filter that's causing the problem. That's what makes the,
15 when it steams up and then you wipe it one time with a dirty
16 glove, you're done for the day. I mean, you're going to
17 have to go clean it. You find more helmets are staying in
18 the up position now, back on their heads. They're not
19 wearing them or they're just, we're going to do the paper
20 respirator and wear it, because they say they can't see
21 through these helmets with new filters in. They're causing
22 them to fog up.

23 So it's not a maintenance program. It's the
24 filter that 3M is producing right now, but when we called
25 them, they said, "we can't change it. NIOSH told us this is

1 what we will use."

2 MR. SCHELL: Yeah. You're right.

3 MR. TAYLOR: That's what they told us.

4 MR. SCHELL: Like I say, there is some work
5 being done on that. And I think there's a new Centurion
6 papper that's being developed too, but you're right, Mr.
7 Taylor, that that unit would have to be approved before it
8 could be used under this rule.

9 MR. NICHOLS: Thank you. Our next presenter
10 will be Leon Mosculink. I may have not pronounced that last
11 name right. Also with the United Mine Workers of America.

12 MR. MOSCULINK: The first sentence in the Act,
13 it comes down that we must protect the most precious
14 resource, and that is us, the miners. And to allow, to say
15 that the operator has exhausted all the parameters and we're
16 going to go with the equipment and to up the respirable dust
17 limits to 4 milligrams, in our opinion, that is not
18 protecting the miner, the most precious resource. Joe asked
19 specific, show me in the rule where this is and where that
20 is, and you can't show him. And if it's not a rule, if it's
21 preamble, if it's policy, MSHA can't cite policy. MSHA only
22 cites standards and rules.

23 The full shift, single shift, the reason, the
24 reason that we wear dust pumps at portal to portal is
25 because we have different forms of contaminants that we

1 breathe. Silica from sand, rock dust, coal. And a lot of
2 us are mandatory to work more than eight hours mining coal.
3 We need more than 480 minutes of sampling to get a true
4 sample of what we breathe.

5 And having the inspector, as you said, Ron, the
6 inspector wants to determine when he wants 480 minutes. But
7 that's not true for all the miners today who are working in
8 the mines. We're working more than 480 minutes loading
9 coal, cutting coal, hauling coal. And to, as I said in the
10 beginning, to up, to up the 4 milligrams on a longwall,
11 we're not protecting the most precious resource, and that's
12 us.

13 You cannot, you cannot allow the operators to
14 say, oh, we've exhausted everything and we're going to give
15 you Airstream helmets. And as Marvin says, it's only going
16 to pertain to people downwind on the longwall. What's going
17 to, what's going to say that the operator can't say on a
18 continuous mining section, well, they've done it over here,
19 I'll do it on the continuous mining section and give them
20 Airstream helmets?

21 MR. NICHOLS: If you're asking me a question, I
22 think we've made it clear in the rule that the agency
23 believes that in all other areas of a coal mine, engineering
24 controls could be applied to eliminate the overexposures.

25 MR. MOSCULINK: Marvin, how's the people on the

1 longwall different than any other place in the coal mine?

2 That's what you're telling us.

3 MR. NICHOLS: No. I'm telling you that the
4 agency has recognized that there may be times when the
5 people working furthest downwind may be exposed to
6 concentrations higher than 2 milligrams and that the problem
7 cannot be engineered out. Not, not the sheer operator or
8 anybody else working on the longwall. It's those folks
9 working downwind. Now, if I would have misspoke in any way,
10 I'd ask the panel to help me out with that.

11 MR. SCHELL: It might be helpful to talk a
12 little bit about the process, that we see that the only time
13 that the administrator would even consider administrative
14 controls or pappers downwind of the DO which is the 044 --
15 and I want to emphasize that -- the rule says, right now on
16 longwalls, the designated occupation is the 060. That's the
17 miner working furthest downwind.

18 If we went through plan verification, and that's
19 what I've been talking about, full shift sampling, only the
20 controls listed in the plan in place, okay. If we went
21 through that plan verification process and, based on that,
22 we determined that the operator couldn't apply engineering
23 controls to keep people downwind in below 2 milligrams, the
24 DO would be moved to the 044. The operator would have to
25 comply with the 2-milligram standard at the 044, the sheer

1 operator. Only people working downwind would be allowed the
2 advantage of administrative controls or pappers.

3 And you should recognize that NIOSH says pappers
4 have a protective factor of 25. That means you could take a
5 standard of 2 milligrams and multiply it by 25 and, in
6 theory, allow 50 milligrams of dust downwind. We haven't
7 accepted that. We've said that for that unit, even though
8 NIOSH rates it as a protective factor of 25, we're only
9 going to give it a protective factor of 2 maximum, so that
10 we will give no more than a credit of to a maximum of 4
11 milligrams of dust downwind.

12 But I want to emphasize, you're going to have to
13 go through this -- it isn't you just write to the
14 administrator and he says okay. You're going to have to
15 demonstrate through the plan verification process that you
16 cannot maintain 2 milligrams downwind of the sheer operator.

17 MR. MOSCULINK: And my point again, Ron, I mean
18 those people downwind are, as you're saying, they, they are
19 allowed to work in more than 2 milligrams of dust. That's
20 what you're telling me.

21 MR. NICHOLS: Is that not the reality today? Is
22 that not the reality today?

23 MR. MOSCULINK: The reality? The reality,
24 Marvin, is that you have 2 milligrams, you have a law.
25 Miners have died for -- that we've come to this. And now

1 you're going to say, well, we're going to let the operators,
2 because -- because the operators come to you and say, well,
3 we can't do this, you're going to have to give us parameters
4 where people that are downwind are going to wear Airstream
5 helmets.

6 MR. NICHOLS: No, the first thing we're going to
7 do is ask the operators to apply all feasible engineering
8 controls to handle dust overexposures everywhere in the coal
9 mine. And once we go through that process, if at that point
10 people working downwind are, continue to be overexposed to
11 2-milligram standard, then we will consider allowing them to
12 use personal protective equipment on that limited basis.

13 MR. MOSCULINK: And as the previous Brother
14 testified before, he said that we have, we have people
15 putting socks in these Airstream helmets for the filters,
16 because, because they're fogging up, so they're, so they're
17 improvising.

18 MR. NICHOLS: Okay, but let's back up a minute.
19 We've exhausted all engineering controls and we still have
20 the problem. What would be the alternative to personal
21 protective equipment?

22 MR. MOSCULINK: I mean, we, you know, and Joe
23 stated to you too, Marvin, you know, he was on the advisory
24 committee, and as I stated in my opening sentence, the most
25 precious resource is the miner. We, you know, you have to

1 make the operators do what their plan and what their
2 ventilation plan calls for and you have to hold the
3 operators to that plan. That's the whole reason. You know,
4 that's, that's my thinking of enforcement.

5 I mean, and to me, you guys are giving the
6 operators an easy way out, saying, well, if you've exhausted
7 all your, you know, you've exhausted everything else and now
8 we're going to go to the equipment. To me, you're not
9 helping us, you're not looking out for the miner. And
10 lately it seems like, you know, that's the thing, you know,
11 with the court cases, you know, and I've always got from
12 inspectors and from, you know, we've got cases in court and
13 everything and we can't do this, you know, our hands are
14 tied.

15 You're going to have to say, hey, you know, to
16 hell with our hands are being tied, we have to protect the
17 miner. And like on a full-shift sample, when, on a
18 continuous monitor section, when a continuous monitor's up
19 cutting overcast, they're never sampled. I've never seen,
20 I've never seen a continuous monitor operator sample when
21 he's up cutting overcast in the wall. Am I correct? I
22 mean, yeah, I mean why? How's come? How's come the, the
23 loading crew is not sampled when you're up on bench mining
24 cutting rock?

25 MR. SCHELL: Well, they should be if they're

1 there.

2 MR. MOSCULINK: Yeah, they should be, but
3 they're not. They're not. It's not, you get the excuse,
4 well, that's not, they're not cutting coal, they're on,
5 they're on a rock. We've got to eat that dust. The only
6 thing my, you know, I'm going to stop here and, because I
7 could go on forever, but we have to get back to protecting
8 the most precious resource, and that's us. And with this
9 proposed rule, you're not protecting us. You are not
10 protecting us. Thank you.

11 MR. NICHOLS: Thank you. Our next presenter is
12 Jim Lamont, also with the United Mine Workers of America.

13 MR. LAMONT: Jim Lamont, United Mine Workers of
14 America. I'd first like to start off saying I'm a veteran
15 miner of 22-plus years working underground in the coal
16 mines, and a lot of this, what I have sat down and read in
17 the short time frame that we were allowed, was very, very
18 confusing. I've been to numerous hearings such as this, was
19 able to sit down and fully understand for the most part what
20 was being presented, but in this case, it was very difficult
21 to understand where the rule started and ended and where the
22 preamble started and ended. And I'd just like to have that
23 on for the record.

24 Picking up on one thing, what Brother Mosculink
25 just said about sampling whenever they're cutting overcast

1 and such. Just one thing just popped in my head over that.
2 A lot of coal mines in the industry out here nowadays, what
3 they'll do is they'll cut coal -- this is like in the lower
4 seams -- they'll mine their coal during the weekday and on
5 the weekends they back up, cut bottom where they're mining a
6 lot of rock. And what we have encountered in some of the
7 mines that I've been in in the past is there is no
8 provisions and actually no parameters set up to take care of
9 the dust and cutting rock once you've already mined the coal
10 out, you're backing up.

11 And as Brother Mosculink said also, I have yet
12 to ever see anybody be sampled under those conditions. Just
13 recently, I had to return to the mines for a brief period of
14 time. The mine in which I, the mine I came from, was just
15 recently shut down. And being away for a short five years
16 was a big change. Not only me going back, spending six
17 weeks there trying to catch back up on how things are done,
18 but the physical aspects of it all also.

19 I was working back at the face and things have
20 changed a lot since I have left the industry in that respect
21 too. One thing I did notice, you get a lot of these
22 continuous mining sections. The dust that is emitted is
23 unbelievable. And it's been one thing, one of my really big
24 beefs is the amount of dust that these working miners today
25 have to breathe. And like I said, I haven't been away from

1 the industry all that long, and me just going back being
2 away that short few years was a big reality check.

3 And sometimes I have to sit back and contemplate
4 like where do some of these rules come from? We have the
5 advisory committee with all of the recommendations. You've
6 heard the miners throughout the years with all their
7 comments and recommendations on what we need. And then we
8 get the stuff in this proposed rule that just goes
9 completely against it. I don't know, and you know, nothing
10 personal to the board up here, but I think a lot of folks in
11 Arlington should go back into the mines, spend a period of
12 time there, actual working conditions, and get a reality
13 check. I mean, I think a little bit of everybody needs to
14 that. It'll open everybody's eyes up.

15 One thing that we did do is sit down and we talk
16 about the amount of samples that are going to be reduced by
17 some 83 percent. What we did was sit down and, like I said,
18 again, in a short period of time, and some of this may not
19 be completely accurate, but this does come from some of
20 MSHA's own records. The Cumberland mine. The number of
21 total samples -- and I'll just go over the summary of this
22 here, this includes the operator and MSHA samples for the
23 month of January, and this is of the year 1999 -- a total of
24 57. The month of February, 31. March was 50. April, 11.
25 May, 38. June was 42. July, 24. August, 58. September,

1 30. October, 26. November, 23, and December, 24. For a
2 grand total of 414 samples that was taken.

3 Now, from my understanding of this, and correct
4 me if I'm wrong, this is going to be substantially reduced.

5 MR. SCHELL: Jim, is that samples or sampling
6 shifts you're talking about? Because what MSHA is proposing
7 would be to take, and we are doing that now by a policy,
8 we're taking the same number of samples, roughly, that
9 operators do, but we're not sampling as many shifts as
10 operators do. So the answer, to some degree, is yes, if you
11 have operator sampling and MSHA sampling, when operators
12 stop sampling, the number would be reduced.

13 But we are saying, since we're sampling
14 bimonthly, which is six times a year and we take at least
15 five samples on the shift that we conduct the sampling, and
16 the operator takes one on the five shifts, the total number
17 of samples won't change much. So the, I don't know if I'm
18 saying that right. The number of samples will remain about
19 the same. The number of shift samples will decrease.

20 MR. LAMONT: Under your calculations, what would
21 that approximately be?

22 MR. SCHELL: Well, right now, the operators take
23 30 samples, because they sample one, they take one sample
24 for 30 shifts. That equals 30. We're proposing to sample
25 six shifts and take five samples, which would be 30 samples.

1 The difference being we sample five occupations on a shift.

2 The operator basically samples the high-risk occupation.

3 MR. LAMONT: These numbers I did give you were
4 actual samples.

5 MR. SCHELL: And they're both MSHA and operator?

6

7 MR. LAMONT: Yes. Yes.

8 MR. SCHELL: Okay. The numbers should decrease.

9 MR. LAMONT: Actually, the numbers I came up
10 with and the numbers that MSHA came up with, mine was lower,
11 which I went with the lower number. The number I did get
12 from MSHA with the operator and MSHA taking, was 432. That
13 was for the Cumberland mine. For the Emerald mine, it was a
14 grand total of 358.

15 MR. SCHELL: Well, one of the points we're
16 making is when the operators take their samples, they decide
17 the day they're going to sample and they know the conditions
18 under which they're going to sample. They sample one
19 occupation. When MSHA comes in, it's unannounced. We
20 sample five occupations so we get a better idea of what's on
21 that section. So I think all of us, I think we're all in
22 agreement that MSHA sampling is better than operator
23 sampling in terms of being more representative perhaps.

24 MR. LAMONT: Still, I believe with the advisory
25 committee's recommendations, we're under the impression, in

1 which they asked for MSHA to take over the sampling of the
2 operator sampling, that it would be sampling just as much as
3 which the operator did. And I'm not under that
4 understanding. What you said would be a total of 36.

5 MR. SCHELL: But you are right. We are not
6 sampling the number of shifts that the advisory committee
7 recommended. That is correct.

8 MR. LAMONT: That's all I have.

9 MR. NICHOLS: Thank you, Jim. Our next
10 presenter will be Gene Davis, also with the United Mine
11 Workers of America.

12 MR. DAVIS: My name is Gene Davis. I work at
13 Consol at the Dilworth mine in Green County, Pennsylvania.
14 I believe there are a few things I need to say about the
15 proposed rule, so we'll get right to it. During the first
16 round of fact finding for this rule, I remember the outcry
17 by myself and other miners to the advisory committee on the
18 need for full-shift sampling. These outcries seem to have
19 fallen on deaf ears, as MSHA in its infinite wisdom feels it
20 is not necessary to sample a full shift to have a
21 representative sample of the amount of dust that we are
22 working in.

23 The way I read this rule, and please correct me
24 if I'm wrong, is that once the plan is verified, if the
25 bimonthly sample that is out of compliance then, and only

1 then, will MSHA take a full-shift sample for abatement
2 purposes. If you were out of compliance for the 480
3 minutes, how bad was the actual concentration these men were
4 in for the entire shift, which could have been ten or even
5 12 hours?

6 Or how many days, how many other days were these
7 men out of compliance in the ninth, tenth, 11th or 12th
8 hour? I'm sorry for asking that question. I know there is
9 no way to tell what that concentration was at this time, nor
10 will they ever know without complete full-shift sampling.
11 Let me see if I understand this part of the rule, which I
12 believe states that if a single sample comes in at 1.71
13 milligrams per cubic meter or less, then it would not be
14 necessary to sample that area any more in that sampling
15 period. This, of course, would be a 480-minute or an
16 eight-hour sample.

17 Now, if you have a sample that comes in at 1.7
18 for eight hours, which is considered a good sample, and you
19 break this down, it means that that sample has gained 0.85
20 milligram per cubic meter every four hours, which means in a
21 12-hour shift, these men could be working at 2.55 milligrams
22 and MSHA truly believes this is what we need. That's scary.

23 Perhaps you did not understand this message the
24 first time we said it, and if that is the case, allow me to
25 reiterate. We need full-shift sampling. That is to say

1 that if the shift is nine, 10 or even 12 hours, we need an
2 accurate measurement of the amount of dust that we are
3 working in for these long hours.

4 Secondly, you make reference in the preamble to
5 the fact that there is no confidence in the operator
6 sampling program, because of years of, to be blunt, cheating
7 and manipulation. MSHA cites this as one of the reasons for
8 taking over the program. However, MSHA is now proposing to
9 take fewer samples, fewer shift samples, 83 percent fewer
10 shifts. And then, once the sample is taken and found to be
11 in compliance, MSHA will then rely on the very same people,
12 that is management, to perform on-shift exams of the dust
13 parameters to ensure the level of dust sampled will be
14 indicative of the actual dust amount in the atmosphere.

15 If you cannot trust the management to take the
16 samples, how can you rely on them to perform the needed
17 on-shift exams? I wonder how many citations were written on
18 the dust parameter check since '96, when they were put into
19 effect. Is it just me, or does this approach seem flawed
20 from the beginning? The one thing we do not need is fewer
21 samples. Fewer samples simply will not tell us what we need
22 to know.

23 The next item I'd like to address -- and I won't
24 be too long, because I believe it to be more ridiculous than
25 the first two -- is the use of an Airstream helmet to clean

1 up the atmosphere. Excuse me. The Airstream helmet cannot
2 clean up the atmosphere. It can only mask the amount of
3 dust we are actually working in.

4 Not only will MSHA allow the use of these
5 helmets, they will allow the concentration to double to 4
6 milligrams per cubic meter when they are used. They will
7 allow this knowing all that has been written about the
8 effect of this and how it can be reduced by velocity, angle
9 of deflection, the fact that they are being worn improperly.
10 And don't forget the very restrictive filter that many
11 miners are not wearing at this point in time. MSHA still
12 believes it is proper to allow the use of this personal
13 protective item instead of cleaning up the atmosphere.

14 To answer that, I will make this statement. If
15 you do not write a rule that stretches the limits of
16 existing dust abatement technology, how will you ever move
17 ahead in this field? All management will have to do to come
18 into compliance is buy more Airstream helmets. What will we
19 have next? A helmet that will allow us to work in 5, 6, or
20 even 7 milligrams of dust? So instead of a dust abatement
21 technology, we end up wearing a space suit. I do not
22 believe this is the approach we need at this time.

23 In summary, I would like to say this proposed
24 rule does not come close to protecting us from the
25 devastating effect of black lung. What MSHA has done, once

1 again, was appease the workers with an advisory committee,
2 which had two labor representatives on it, and then totally
3 ignore their findings in the most important areas, such as
4 full- shift sampling, lowering the 2-milligram limit and not
5 raising it, not allowing administrative or personal
6 protective gear to be used to come into compliance. And
7 there are many more that were ignored.

8 Then, as always, they write what they wanted in
9 the first place and expect us to accept it. Not this time,
10 guys. Take this rule back and give us a rule we can live
11 with, literally live with. And that's it.

12 Two other things. Sitting in the back I hear
13 you talking about plan verification and you make it very
14 adamant that this verification will be under very strict
15 guidelines and you'll have to meet a certain tonnage very
16 close to what the tonnage for that last 30-day period was
17 and 15 percent of your, you have to be within 15 percent of
18 your parameters. Where will that sample be taken? At the
19 start- up of a panel? At the midface of a panel? Or at the
20 end of a panel? Because that means a lot.

21 If you verify this at the end of a panel when
22 the coal is soft and falling off the face, and then we go in
23 to start-up, your verification is really not very good at
24 that. And I haven't heard anybody address that. Where will
25 that be taken?

1 MR. SCHELL: We haven't focused on that in the
2 rule, but that's a very good comment.

3 MR. DAVIS: Yeah, I figured that might have
4 been. Another one, on the Airstream helmets, on the
5 Airstream helmets, you say that, I guess the last, Joe Main
6 was up there, and Leon was up there, and you asked them, if
7 we're not to use Airstream what are we to do? You know, and
8 I guess you're wanting the mine workers to say, well,
9 Airstreams are all right.

10 Well, here's what I think. If you want to use
11 the Airstream as an interim, fine. Do not raise it to the
12 level to 4 milligrams. Leave it at 2. Write the citation,
13 put an abatement time on it.

14 At the end of the abatement time, let's have a
15 meeting and find out what management has done to come into
16 compliance with the 2.0 limit. If they have not, if they've
17 drug their feet, let's bump the citation to S&S and now put
18 another abatement time on it. If at the end of that period,
19 they still have not made a substantial move into that field,
20 let's put it to an order and put another abatement time on
21 it. If you want to use the Airstreams, that's the way to
22 use them? Don't throw them in there blindly and leave them
23 on their head with no abatement time on it. Anything else,
24 fellows?

25 MR. NIEWIADOMSKI: Mr. Davis, can I ask you to

1 clarify something?

2 MR. DAVIS: Yes.

3 MR. NIEWIADOMSKI: Early on you had mentioned a
4 concentration of 1.71.

5 MR. DAVIS: Yes, I believe I read that in there
6 where if a single sample comes out at 1.71, it will be
7 considered good and no more sampling will be done for that
8 period in that area. I believe I read that in the preamble.

9 MR. NIEWIADOMSKI: What that has to do with, I
10 think that there's some confusion. That statistic or that
11 concentration is a limit for plan verification. What we're
12 basically saying is that --

13 MR. DAVIS: Well, I believe that's fine, but --

14 MR. NIEWIADOMSKI: But that's very important,
15 because remember, right now, and I need to clarify, right
16 now if we go out there and sample, and the operator's mining
17 60 percent of the last 30 production shifts on the average,
18 and the concentration of the samples is 2 milligrams, we'll
19 approve that, okay? It's compliance. But in the plan
20 verification, it's very stringent.

21 What we're basically saying is you're going to
22 be producing at the 10th highest production level, and your
23 concentration, we're not going to accept the plan as being
24 adequate at 2. We have to be highly confident that it's,
25 that it's meeting the standard, which means 1.71 for coal

1 mine dust. If it's any higher, we have to sample some more.
2 What we're basically saying, under those conditions at 1.71
3 for coal mine dust, and remember the other thing that you
4 need to recognize, there are two tests that have to be met.
5 We're talking about coal dust and quartz dust. That plan
6 has to be designed to make sure that you're anticipating
7 that you have to meet 100 micrograms and 2 milligrams.

8 But for us to accept it, we're not going to
9 accept it at 2 or 100, we're going to be 95 percent
10 confident the plan works. So the levels are even reduced
11 down to 1.71 and 87. And that's what I wanted to clarify.

12 MR. DAVIS: Let me fully understand this then.
13 What you're telling me is a full -- if I'm working 12-hour
14 shift, and a full verification sample comes in at 1.71 --
15 that's fine. That'll meet.

16 MR. NIEWIADOMSKI: That's fine. That will meet.
17 That's a 12-hour sample.

18 MR. DAVIS: That's a full 12-hour sample. Okay.
19 Now, on a compliance sample, the normal bimonthly compliance
20 sample that you come in and do and you hit a 2.0 and you
21 will say, well, that's okay, a 2.0 is still fine. Is that
22 right?

23 MR. NIEWIADOMSKI: We would --

24 MR. DAVIS: And that would be a 480-minute
25 sample? On the same 12-hour shift that I just worked?

1 MR. NIEWIADOMSKI: But not at 10th highest
2 production level.

3 MR. DAVIS: But if I'm at 2.0 in eight hours, I
4 still have four hours of a shift left.

5 MR. NIEWIADOMSKI: Right.

6 MR. DAVIS: How can I be in compliance?

7 MR. NIEWIADOMSKI: If the sample, if the sample
8 is 2 milligrams or any higher, we'll go back and sample it
9 again, because what that's going to tell us is this: We know
10 the parameters during that shift, and most of the time when
11 we go out and sample, the operator normally exceeds what's
12 in the plan. Does he exceed, would he exceed the high
13 production level? No, he's going to try to mine to make
14 sure he's at minimum production. All right?

15 MR. DAVIS: He will exceed the dust parameters
16 but not the production level, let's put it that way.

17 MR. NIEWIADOMSKI: Well, that has not been our
18 experience.

19 MR. DAVIS: It has been mine.

20 MR. NIEWIADOMSKI: But assume that's the case,
21 okay? And if you have a 2-milligram concentration, what
22 that does for us, it's going to raise a red flag in saying,
23 gee, when we did the plan verification, he was right at the
24 plan and he was at 1.71. Here, he's exceeding the plan and
25 he's at 2. That triggers additional shifts of sampling on

1 our part.

2 MR. DAVIS: If he comes in at 1.98 on that
3 compliance sample, will you allow that to go then? On a
4 480-minutes compliance sample after a plan has been
5 verified.

6 MR. NIEWIADOMSKI: Okay.

7 MR. DAVIS: You will allow that to go?

8 MR. NIEWIADOMSKI: If the --

9 MR. DAVIS: If the measurement is 1.98
10 milligrams per cubic meter.

11 MR. NIEWIADOMSKI: If it's 1.98, okay, in all
12 likelihood what we're going to be doing is we may in fact go
13 back --

14 MR. DAVIS: I don't mean to interrupt you, I
15 don't want to know what you might do, I want to know what
16 the rule says you'll do.

17 MR. NIEWIADOMSKI: We'd probably, we would go
18 back. We would go back. We would go back and say we'll
19 have to sample another shift.

20 MR. DAVIS: Even though he is in compliance.
21 You cannot write a citation at that point. Right?

22 MR. NIEWIADOMSKI: That's right. That's -- but
23 it allows us to sample some additional shifts to see whether
24 or not there is a problem with the plan. If we suspect that
25 the plan is inadequate, we would go into re-verification

1 sampling.

2 MR. DAVIS: Whose decision will that be at that
3 point in time?

4 MR. NIEWIADOMSKI: That's the inspector,
5 district manager.

6 MR. DAVIS: All right. There's nothing written
7 on that, thought. That 1.98 is actually a clean sample,
8 right? No, I don't, I mean I read the preamble, if it's
9 something written and I missed it --

10 MR. NIEWIADOMSKI: The clarification is this:
11 That there are no rules out there that actually define or
12 explain how MSHA does inspections, right? We would in fact
13 issue, we have -- we're revising chapter one to actually, to
14 describe, to detail the procedures that we would follow when
15 we do compliance and abatement sampling. I recognize that
16 those procedures are not in a rule. They were never
17 intended to be, because there is no rule out there right now
18 that defines our inspection procedures.

19 We would issue chapter one. That would be
20 issued for public comment. Everybody would have an
21 opportunity to provide comment. That will be articulated.
22 I agree with you. There's nothing in here that says exactly
23 how is it that we're going to be doing it.

24 MR. DAVIS: Right. And you know George --

25 MR. NICHOLS: We understand the comment.

1 MR. DAVIS: And I believe, I really believe,
2 George, that you believe or you hope that this is going to
3 work just like you want, and maybe in a absolute crystal
4 ball, it might. But let's be real. It's not going to work
5 in that manner. I could guarantee it's not.

6 MR. NIEWIADOMSKI: I truly believe that this is
7 the best package, this is -- if you take a really close look
8 at it, you will find that this is a significant improvement,
9 the most significant that we've had over the past 30 years.

10 MR. DAVIS: George, I'm not going to say it's
11 not an improvement. Is going to say it's not enough at this
12 time. And I'll leave it go at that time. I don't believe
13 it to be enough at this time. So we agree to disagree on
14 that one, George.

15 MR. NICHOLS: Okay. Thanks, Gene. Our next
16 present will be Chuck Hayes, also with the United Mine
17 Workers of America.

18 MR. HAYES: My name is Chuck Hayes. I'm from
19 District 31, Local 1570. I feel that this proposal reduces
20 protection for the miners. You are increasing the dust
21 exposure level that's contained in the Mine Act, the current
22 standards. This proposed rules dramatically reduces the
23 frequencies of sampling by 83 percent. And you're going to
24 change the samples back to bimonthly, six shifts a year. In
25 the out-by areas, one time a year.

1 The advisory committee, they do not support this
2 proposal. They recommended that we'd have more samples be
3 increased, not decreased. This proposed rulings are not in
4 the best interests of the coal miners, and I feel that it's
5 undercutting the protection for the miners. That's all.

6 MR. NICHOLS: Thank you, Chuck. Our next
7 presenter will be Tom Sutton, also with the United Mine
8 Workers of America.

9 MR. SUTTON: Good morning. My name is Tom
10 Sutton. I'm from Local 1248, United Mine Workers safety
11 committeeman. The advisory committee was formed for a
12 reason. Most importantly, two of those representatives were
13 miners. They made recommendations on this, but weren't
14 followed. I don't understand why. They recommended that
15 the sampling be increased, not decreased. You decrease it
16 by 83 percent. They didn't call for the elimination of the
17 operator sampling. Think it over. One shift for out-by
18 workers. I'll never understand that one.

19 There's a lot of other work that takes place in
20 a coal mine than mining coal. One of the things that was
21 brought out by Brother Leon was the cutting of overcast.
22 We've had lengthy discussions on this. More dust, less
23 ventilation, no sampling. I don't understand it. If an
24 inspector comes without an AR card, there is no monitoring.
25 We're not represented. That's it. You got to reconsider

1 this thing. That's all.

2 MR. NICHOLS: Thank you, Tom. Our next
3 presenter will be Chuck Brant, also with the United Mine
4 Workers of America.

5 MR. BRANT: Good morning. My name is Charles
6 Brant and I'm the chairman of the safety committee at the
7 Dilworth mine. Since it's been laid in my lap here in the
8 past week, and I've listened here to a lot of my fellow
9 miners on their comments, I have some of the same comments
10 to make on the Airstream helmets. I have to answer to a lot
11 of my fellow miners at the mines, and from what I've read
12 out of this, I'm not a Philadelphian attorney, but it's
13 we're going do this and we're going do that. But what I
14 seen here is, the main thing and some of the things that
15 I've been asked at the coal mine is why I'm not sampled.
16 Aren't I considered a coal miner? If I'm drilling on an
17 overcast, I'm drilling in rock, why I'm not personally
18 sampled. If I'm shoveling belt, why doesn't MSHA sample me?

19 They only used to, the miners did it on the
20 production units. Well, it's going to be sad for me to go
21 back to these guys and tell them, yes, I got you an answer.
22 MSHA wants to cut sampling. I don't know. I haven't been
23 in this this long, but I've been a coal miner for quite a
24 few years. I've worn the dust screen helmets. Do they cut
25 dust? Yes. But you can't put us in more concentration of

1 dust with these helmets.

2 I know myself as a coal miner, when I wore one
3 of these as a sheer operator, I changed my filter every day
4 at the beginning of the shift and at lunch time. And when I
5 come outside and blew my nose, there was still dust
6 concentration in my nose. I don't know what it's going
7 take. I've seen my, a few of my older uncles die of black
8 lung.

9 Somebody said that, who makes these laws. I
10 don't know who makes these law. Like I said, I'm not a
11 Philadelphian attorney. I don't know, some of the people
12 that come up with some of these laws never worked in the
13 coal mine. But my final thing here is today is we don't
14 need to cut dust samples. We need more of it. Thank you.

15 MR. NICHOLS: Thank you, Chuck. Our next
16 presenter is Larry Kuharcik. I may have butchered your name
17 there, Larry. Also with the United Mine Workers of America.

18 MR. KUHARCIK: Good morning. My name is Larry
19 Kuharcik. I'm chairman of the safety committee, Local 1702,
20 United Mine Workers of America. Before I get started, sir,
21 I believe I can clarify something that I believe you said.
22 When Mr. Taylor was up here, you said you never heard of a
23 company denying miners rights if an inspector didn't carry
24 an AR card. Is that correct? Did I hear you? Is that the
25 statement you made?

1 Well, I am standing proof in front of you, and
2 the inspector's sitting in the crowd with us today. I was
3 with him in the coal mine. He was already in the coal mine.
4 The company was informed he did not have an AR card. I was
5 called and told that my rights were denied unless I put
6 myself on union business, my pay would be sacrificed and
7 that the coal company wasn't responsible for my miners'
8 rights, because he didn't have an AR card. So that is true.
9 We do not get to escort an inspector without an AR card to
10 have miners rights.

11 Okay. Since I clarified that, you know I read
12 this proposed rule. I read the preamble. And the only
13 thing I could ask myself is why? So many things in the
14 preamble was recommendations by the advisory committee was
15 not put into the rule. One thing I want to talk about is
16 engineering control. Engineering control, I'm here to tell
17 you, can work. Engineering control does work. I work at
18 Consolidation Coal Company's Blacksville Number II mine, and
19 working closely with Mr. Pawnshrof in dust control with
20 MSHA, several longwall panels ago, we had a drastic change
21 in our air velocity. Our air velocity was raised to 650 CFM
22 at number 10 shield and 460 CFM at the tail. Our panel was
23 halfway out of the coal mine at that time.

24 Consolidation Coal told us, I heard statements
25 made to me, they're going to shut our mine down. We cannot

1 do it. We cannot maintain these air velocities. When we
2 get to the new two mel. panels, we're done. Well, you know
3 something? We've been through several two mel. panels. We
4 have never had a problem. Engineering controls do work.
5 They can work. In fact, last week, I was up on that
6 longwall face and I had over 700 650s required. So they
7 proved to us that they can make engineering controls work.

8 And that's leading me into this Airstream
9 helmets. Sir, I respectfully disagree with you. To me, it
10 sounded like you were downplaying the fact that this is only
11 going to pertain to a few individuals behind a sheer. Well,
12 those individuals need protection as much as everybody else
13 in that coal mine. To raise the 2 to 4 for those
14 individuals is ridiculous, in my opinion. It's uncalled
15 for, because we're going to put helmets on these few
16 individuals, they have lungs and lives like the rest of us
17 in this coal mine. They need protecting.

18 We should never, I cannot believe it, a few
19 years ago, I'm sure many of you may have heard, a
20 well-respected company doctor made a public statement,
21 "there is no longer black lung in our nation's coal mines."
22 That was in the newspapers. So that's the attitude the
23 companies have. That told me that right then, when their
24 doctor says there's no longer black lung. And by MSHA
25 saying they want to raise the milligrams for even if it's a

1 few , as you say, miners, is absurd.

2 I did some research. At the Blacksville Number
3 II coal mine, Local 1702, just in the last 10 months since
4 September the 27th of 1999, 26 -- these are your forms,
5 filed with the U.S. Department of Labor by the coal mine --
6 26 of my fellow miners have traveled to Charleston, West
7 Virginia, and have been diagnosed with the dreadful disease
8 of black lung. In the past 10 months. 26 of them. The
9 average age of these 26 miners -- this is scary -- is 49
10 years old.

11 And yet MSHA tells me that they want to raise
12 the milligrams of dust. Once again, sir, even if for a few,
13 I'm exposing them to this black lung disease. Now that's
14 not acceptable. That's uncalled for. I don't know where
15 MSHA's coming from on this.

16 I was going to go on to the 103 (f) but Joe did
17 that pretty well, and I heard your explanation to him. So
18 in closing, I want to tell you, whether it was budget cuts,
19 MSHA department downsizing, no matter what the cause was,
20 the United Mine Workers has always backed MSHA. And the
21 United Mine Workers did not, and let me repeat, we did not
22 back MSHA expecting any favors or special things down the
23 road. We backed MSHA because it was the right thing to do.

24 Now I'm challenging this board to do the right
25 thing, and that is to go back to the table, sit down at the

1 table, rewrite this proposal and incorporate the
2 recommendations made by the advisory council to protect
3 every man and woman in this country's coal mines. Thank
4 you.

5 MR. NICHOLS: Larry, do you want the reports you
6 had put in the record?

7 MR. KUHARCIK: Yes sir?

8 MR. NICHOLS: Do you want the reports you were
9 referring to or had in your hand? Do you want those as part
10 of the record?

11 MR. KUHARCIK: Yes sir. I made you a copy, all
12 those, I'm sure your agency has it. But the coal mine must
13 admit them to you.

14 MR. NICHOLS: Okay, let's --

15 MR. KUHARCIK: These are the 26 in the past 10
16 months.

17 MR. NICHOLS: Okay. Let's --

18 MR. KUHARCIK: And I have many, many more, but I
19 thought that went far enough, 26 in 10 months, ridiculous.

20 MR. NICHOLS: Okay, let me, while you're up
21 here, let me say again, the agency's position on personal
22 protective equipment. It is the agency's desire to never,
23 never have to have a person use personal protective
24 equipment, that the entire dust concentration problem can be
25 engineered out. And that will be, that's a high standard to

1 meet. That will be the discussion that takes place first.
2 If the problem cannot be engineered out for the people
3 farthest downwind, it is not our desire not to, not to have
4 these people protected in some way. And that's where the
5 consideration of personal protective equipment will come
6 into play.

7 MR. KUHARCIK: I understand that, but my point
8 was when a coal company can petition you and say we have
9 exhausted all engineering controls and we got to have these
10 Airstream helmets, I told you about our velocity but raised
11 and they told us that they could never do it, and they did
12 it. They do work. Engineering controls work, and we should
13 go use the helmets, but do not raise the level of milligrams
14 for the person using the helmet. I can't accept that.

15 MR. NICHOLS: Okay. All right. Let's use the
16 example you gave that I'm petitioned as the administrator
17 for the use of Airstream helmets. First thing I would do
18 would go back and talk to Tim Thomson, the district manager
19 and Paseroff and get their feedback on whether all
20 engineering controls have been exhausted. If they tell me
21 no, then request denied. One other commenter said we ought
22 to have a meeting and discuss this before the approval for
23 Airstream helmets is granted.

24 I can guarantee you there'll be a lot of
25 meetings and discussions on whether there are any other

1 engineering controls that can be applied to these -- these
2 people working downwind.

3 MR. KUHARCIK: Well, my belief is today's day
4 and age and technology, engineering controls, there's
5 something out there we can do. If we tighten the curtains,
6 if we make sure the stopping line is proper, if we do
7 everything we're supposed to do, engineering controls will
8 take care of the problem. We proved it at Blacksville when
9 we raised it to 650 and we was told absolutely no way, and
10 we're doing it easily. And so the Airstream helmets is not
11 an answer and raising the milligrams is not an answer to put
12 our people in that exposure. That's just my opinion on
13 that, and I'm standing fast to that. I don't agree on that
14 part at all.

15 MR. NICHOLS: Okay. Thank you. Our next
16 presenter is Wayne Conway, also with the United Mine Workers
17 of America.

18 MR. CONWAY: Ladies and Gentlemen, my name is
19 Wayne Conway. I'm the safety committee person for Local
20 9909. You know, I was under the understanding that MSHA was
21 actually going to take this program over. That you really
22 weren't comfortable with the way the companies were taking
23 care of their sampling process. Well, I'm not comfortable
24 with what I've read, or should I say what I've tried to
25 read.

1 To me, it was kind of was maybe we spent more
2 time on the format, setting this up so we could be confused
3 versus actually finding some data to support we only want to
4 do one sample out-by. Because it's actually, is it safe for
5 me to believe that MSHA believes that people that are out-by
6 aren't exposed to dust? You know, there seems to be maybe
7 kind of like a lapse in time, that we're still going back to
8 where the belt lines are short and they're small. We're
9 dumping into coal cars. Only the top portion of that coal
10 car is actually being exposed to people as it crosses the
11 mine.

12 Well, I'm here to tell you that these belt lines
13 are a lot faster, a lot bigger, every piece of coal that's
14 mined by in-by people is being exposed to out-by people.
15 We're all on intake now. We're talking about miles of belt
16 line now. And these miles of belt line have to be
17 maintained.

18 And I'm kind of curious, was there ever a
19 mine-to-mine survey done, if nothing else, just using a
20 Fireboss books to determine how many shifts people are
21 dragging belts, how many people are shoveling belts, how
22 many people are dragging returns, how many people are doing
23 nothing more than track bolting, track cleaning. I'm just
24 kind of curious. Was there any type of survey to that
25 effect?

1 MR. SCHELL: I can tell you what we did look at
2 is the number of violations that have been issued both on
3 operator samples and on MSHA samples out-by. And the reason
4 that we proposed at least -- and the way we proposed that
5 was we would sample those at least once a year. The number
6 of violations that are issued on out-by DAs are very, very
7 small. I think less than 20 a year. Another point I wanted
8 to make, that didn't mean that we were only going to sample
9 the out-by DAs. It would still be our policy to sample
10 out-by areas and only, you know, the way the procedure is
11 now, once we find high levels of dust out-by, the operator
12 is required to incorporate that DA into their plan and then
13 it's sampled. We would continue to do that.

14 MR. CONWAY: But the word "designated" is kind
15 of what troubles me. There's no set format on how we're
16 planning on sampling out-bys. It says nothing more than
17 "designated," which means actually nothing to me.

18 MR. SCHELL: Okay, well the "designated" is the
19 same interpretation we have that now. That's where we've
20 already identified that as a dust-generating source and the
21 operator then is required to list that in their plan as a
22 dust-generating source. We would be required to sample that
23 at least once a year. And then, in addition, we'd be
24 sampling other out-by areas. And if we found those to be a
25 problem, the operator would have to include those in the

1 plan.

2 So if your concern is that that may not be
3 frequent enough, that's a valid comment, and that's
4 something we need to consider. But we wanted you to know
5 the reason that we said once a year was, we do issue
6 relatively few citations at those out-bys, but your comments
7 on our frequency are something that we need to consider.

8 MR. CONWAY: Yeah, because, you know, the amount
9 of people that it takes to actually maintain belt lines in
10 today's coal mines is almost as great as the people who are
11 working at the face. Engineering controls for those type of
12 people, spray bars every mile apart. But you know if that's
13 still a little bit too dusty, go ahead and order this
14 respirator. It's not going to help you, because we don't
15 have to pit-test you for it, but take it anyway while you're
16 dragging. And that's the type of thing that the out-by
17 people are working in.

18 And like I said, there are so many more of them
19 now then ever before, because like I say, we're being
20 actually exposed to every piece of coal that's mined at that
21 face. By the time it gets outside, someone has to maintain
22 this. Like I say, there are just not enough people being
23 tested, because your actual continuous monitoring could be
24 established through the whole coal mine. Let's not just
25 talk about face. There's no reason why it can't be done.

1 Another point is I'm kind of curious, was there
2 any survey done on the actual out-by people that are
3 receiving black lung benefits or has received black lung?

4 MR. SCHELL: Not that I'm aware of.

5 MR. CONWAY: I think you'll find that the bulk
6 of those people are out-by people. The last three people
7 from my mine alone were out-by people, have never ever spent
8 not one day at the face other than maybe having to go and do
9 some out-by work. The reason I say it is my wife was one of
10 them and she received 10 percent.

11 MR. SCHELL: Well, that's a fair comment. We'll
12 look at that data.

13 MR. CONWAY: Like I said, it's not that we do
14 not appreciate what your overall intent is, but we're going
15 to have to live with this probably another 20 years before
16 it's ever looked at again, so we need, you know, all the Ts
17 crossed on this thing. Are there any questions?

18 MR. NICHOLS: I don't think so. Okay. Thanks,
19 Wayne. We're about halfway through the list of folks that
20 signed up and wanted to present testimony. I think we're
21 going to work straight through lunch, because I know some
22 people need to either travel back and get to work or just
23 travel back to their -- some distance to their homes. So
24 how about if we take a break now until about 11:25, and
25 let's try to get back on time and get seated and kind of

1 quiet down so we can get started back on this hearing.

2 (There was a brief recess.)

3 MR. NICHOLS: You know we announced to the
4 hearing this is going to be very difficult to determine when
5 single shifts started and plan verification took over, so I
6 need to do one thing here, if you'll bear with me. My
7 attorney tells me I need to read a piece into the record on
8 plan verification so I'll do that and you can continue to
9 testify on both as we said earlier, this seems to be turning
10 out to be one hearing, so, which is fine with us, but I do
11 need to read one statement on the record.

12 The plan verification proposal indicates that
13 One, MSHA should take full responsibility for all respirable
14 dust sampling for compliance purposes; Two, MSHA should
15 verify ventilation plans at typical production levels and
16 Three, MSHA should require operators to record production
17 levels and dust control parameters to monitor dust levels.
18 The MSHA rule would do all three things. Under the plan
19 verification proposal, all the existing requirements in our
20 regulations at 30 C.F.R. Parts 70 and 90 for underground
21 coal mine operators to conduct respirable dust sampling
22 would be revoked. MSHA would assume responsibility for all
23 sampling to determine if miners are overexposed to
24 respirable coal mine dust. This includes bimonthly
25 sampling, abatement sampling, sampling to establish a

1 reduced standard in mines where quartz is present, and Part
2 90 sampling for miners who have evidence of the development
3 of pneumoconiosis.

4 Since MSHA would conduct all sampling, the
5 miners' representative would have the right to observe
6 sampling with no loss of pay. Before approving ventilation
7 plans, MSHA would conduct verification sampling under
8 typical production levels, with only the controls listed in
9 the plan in effect, and for the full shift. This would
10 assure that miners are not overexposed to respirable dust.

11 The results of these verification samples must
12 be below the "critical values" listed in Section 70.209 of
13 the proposed rule before MSHA would approve a plan. The
14 proposal defines "full shift" differently for purposes of
15 plan verification and abatement sampling and for bimonthly
16 compliance determination. The proposal would revise the
17 existing definition of "concentration" so that it is an
18 eight-hour equivalent measure, even if the work shift is
19 longer than eight hours.

20 In addition, under the proposal, only MSHA
21 samples would be used to establish a reduced standard in
22 underground coal mines where quartz is present. This would
23 change the existing procedure, which allows operators to
24 submit samples which are averaged with MSHA samples.

25 Finally, MSHA would allow longwall mine

1 operators to use, on a limited basis, either powered
2 air-purifying respirators or administrative controls when
3 feasible engineering controls cannot maintain respirable
4 dust levels at or below applicable standards. Coal mine
5 operators must first request that the Administrator for Coal
6 Mine Safety and Health determine that all feasible
7 engineering controls are in place. If so, MSHA would grant
8 the operator interim ventilation plan approval. However,
9 the operator must implement any new feasible engineering
10 controls which might become available.

11 So we'll continue with the list of those folks
12 that have signed up to testify. The next present will be
13 Jack Rhinehart, also with the United Mine Workers of
14 America.

15 MR. RHINEHART: My name is Jack Rhinehart. I'm
16 a 23-year veteran of Consol Black II mine. I served there
17 for Local 1702 as a safety committeeman for 12 years,
18 chairman of that committee, and also as president and vice
19 president of that local. I now serve in District 31 as a
20 board member for District 31 for United Mine Workers of
21 America. I had four key points that I'd like to bring to
22 you today and a summary of these issues.

23 One, this eliminates the entire compliance
24 sampling requirements in part 70 and 90, with no replacement
25 for compliance sampling; two, drastically reduces the

1 frequency of shifts sampled for respiratory dust compliance.
2 This would be six times for miner sections, one time a year
3 for the out-by workers, such as masons, beltmen. These
4 gentlemen are exposed to dust also; three, would increase
5 the dust exposure level above those contained in the Mine
6 Act and current standards from 2 milligrams to doubled at 4
7 milligrams on the longwall face. Gentlemen, black lung is
8 still a killer in the coal industry; four, prevents mine
9 operators to replace engineering controls with respiratory
10 protection or administrative controls on longwalls, which is
11 prohibited by the Mine Act.

12 Gentlemen, in my office, daily we have retirees
13 who come in, and when they come in, they're carrying oxygen.
14 These gentlemen worked long and hard, and some of these men
15 never received any benefits from black lung. Thank you.

16 MR. NICHOLS: Thank you, Jack. Our next
17 presenter is Danny Clark, also the United Mine Workers of
18 America.

19 MR. CLARK: This is a surprise. I didn't really
20 realize that I was on the list, but basically it's the same
21 thing as what other people have been pointing out to you.
22 One of the main concerns that we have at our mine -- I work
23 at 84 mine and 1197, and our full shift sample is only 480
24 minutes, which doesn't work. If you're in there for a
25 12-hour shift, that's a lot more than 480 minutes, and

1 you're not getting an accurate reading. I guess that's
2 about it. I'll let somebody else go.

3 MR. NICHOLS: Thank you, Danny. I can't make
4 out the next name. Is it Tim or Jim? Okay. Come on up.
5 Which is it?

6 MR. ROBLACK: Roblack.

7 MR. NICHOLS: Tim. Okay.

8 MR. ROBLACK: My name is Timothy Roblack. I'm
9 the chairman of the Health and Safety committee from
10 Cumberland mine. I've been a sheer operator on a longwall
11 for about 11 years. I've spent countless hours documenting
12 the respirable dust program at our mine. I've also
13 participated in numerous meetings management and union and
14 MSHA to resolve our respirable dust problems. I also have
15 testified at hearing in the past concerning respirable dust
16 rules changes.

17 The new proposed dust rule change will greatly
18 weaken the respirable dust control throughout our nation. I
19 will testify now, as I have testified before, that to
20 eliminate CWP, Coal Workers Pneumoconiosis, or black lung,
21 an entirely preventable disease, we don't have to isolate
22 some strange gene or identify some unknown chemical. We
23 know the causes.

24 To eliminate the causes of CWP is to eliminate
25 CWP, pure and simple. Good and enforced respirable dust

1 rules will do that. Despite the mountains of paperwork and
2 information I've received on this subject, the dust rules we
3 need are elementary school simple. They are as follows:
4 Dust sampling must be portal to portal, regardless of shift
5 length. At our mine, our longwall and sections run shifts
6 that can be eight, nine, 10 or even 12 hours. Respirable
7 dust sampling must continue at its current rate or increase.
8 Anything less is a reduction in our protection.

9 MSHA must be allowed to single sample dust
10 levels to spot check the levels of protection afforded to
11 our miners. For example, about four years ago, our longwall
12 was out of compliance. They did two sets of compliance
13 samples. Finally, it came into compliance, but it was a
14 very low reading of .9 percent average. MSHA came in and
15 made a single sample and their average was 1.9.

16 If MSHA had not stopped production and checked
17 the dust parameters, we probably would have been out of
18 compliance again. However, no action was taken. But the
19 main concern was the single sample proved that our longwall
20 was not dust-free, as we were led to believe from the
21 company samples. And most importantly, the single sample
22 prevented a part 90 miner from being assigned to that area.

23 Safety committees and miners' reps must have
24 input over all aspects of respirable dust control plans.
25 For example, we have part 90 assigned to a longwall belt.

1 The DA on this belt is in and out, in and out. After
2 numerous meetings, phone calls, picking up -- plans by
3 management, the miners' rep was finally able after a lengthy
4 time to get the part 90 miner moved to a less dusty
5 atmosphere.

6 If the miners' rep were not there to have input
7 into all aspects of respirable dust plans, this would not,
8 definitely not have happened. A part 90 miner has to have
9 all the protection afforded to him under the law. He's
10 already paid his dues to the industry. The miners'
11 representative being present throughout the whole respirable
12 dust plans assures this.

13 Continuous dust monitors. Extensive research
14 and monies have been spent on their development. The miners
15 believe this is a useful tool whose time has come. We
16 believe this tool is useful, not for a compliance issue but
17 to spot problem areas so they can be addresses as soon as
18 possible. The sampling tools used today are the same basic
19 tools used since 1969, 31 years ago. It takes about 10 days
20 to obtain the results of a sample, delaying identifying
21 problem areas. No other industry in this country uses the
22 same basic tools to identify health hazards that were used
23 31 years ago.

24 Airstream helmets must not be used in lieu of
25 engineering controls. They are not a sealed unit. They are

1 difficult or impossible to use in low height conditions.
2 Their effectiveness is greatly reduced once you bend your
3 head over by as much as 60 percent. It is also unknown how
4 the fibers in the filters will affect the lungs as time goes
5 on.

6 Allowing companies to use Airstream helmets in
7 lieu of dust controls is a travesty. I know that from
8 previous face experience. If you have a respirable dust
9 problem, you also have a float dust problem. They go hand
10 in hand. To allow Airstream helmets in lieu of dust
11 controls will allow companies to go to 4.0 milligrams.
12 We'll be setting up, in our case, a longwall, for a
13 condition -- float dust. Should ignition occur, a longwall
14 would have biblical disaster proportions. Allowing
15 Airstream helmets in lieu of dust controls will place our
16 own industry in the same dilemma that we will be in when the
17 noise rules take effect.

18 The companies generally take the easy way out as
19 far as noise regulations go, opting for hearing protection
20 in lieu of engineering controls, thus placing the industry
21 in a pickle come September 13th, 2000. Allowing Airstream
22 helmets in lieu of dust controls will place the coal
23 industry in the same type of predicament -- as they,
24 management, has placed themselves as far as noise reduction
25 goes. They always try to take the easy way out.

1 To eliminate CWP is not complicated. The rules
2 need to do this as stated above and must be enforced. I
3 testified to the advisory committee in '96 that the -- and
4 the proposed rules as they come down to us now, in kind
5 words, are kind of a big disappointment to us in the mining
6 industry. I ask, where is our protection? Under these
7 proposed rules, how can we help our people should they come
8 up with a respirable dust problem. Under these proposed
9 rules, we have no way to help our people.

10 Also, removing any criminal penalties also
11 removes any type of leverage we have to ensure companies do
12 what is required under the law to protect our miners. In
13 summary, as a kid who grew up in the coal patch, my father
14 and grandfather were both miners. The old-timers in my town
15 had a lot to do with raising me. If you were a good worker
16 and you performed good quality work, they took you under
17 their wing. If you didn't, they didn't have anything to do
18 with you. As the saying goes, it takes a whole village to
19 raise a child. I knew that 40 years ago.

20 The last dozen or so years, I've tried to make a
21 difference in our industry. As I worked on a longwall every
22 day, I tried to load as much coal as I could, I tried to do
23 it safely, and I tried to leave the place a little better
24 than I found it. As I walked away from our longwall in
25 October 1999, I questioned myself, despite my efforts

1 towards health and safety on our longwall, did I really
2 leave it in better condition than I left it.

3 You must ask yourselves, if these proposed rules
4 are allowed to be implemented, did you leave the industry in
5 a better condition than you found it? One of the reasons
6 why I walked away from our longwall in October of 1999
7 throughout the course of my employment on the longwall,
8 about the last dozen or so years, I lost about 30 percent of
9 my breathing capacity. I'm an avid outdoorsman and I hunt
10 in the mountains of central PA every year. I hunt with
11 members from my camp who are retired from white collar jobs
12 and are in their mid-60s and they have to wait on me because
13 I can't keep up with them due to my breathing difficulties.

14 It's probably too late for me, but I am
15 testifying for the man who took my place. I am still trying
16 to leave the place in a better place than I found it so that
17 I may be worthy of those that went before me. I'm here to
18 answer any questions.

19 MR. NICHOLS: Thank you, Tim. Our next
20 presenter is Mike Caputo, also with the United Mine Workers
21 of America.

22 MR. CAPUTO: Good afternoon. First of all, I'd
23 like to thank the committee for this opportunity to speak
24 here today. My name is Mike Caputo and I'm a 20-year -- 20
25 plus year coal miner, and I'm also a member of the West

1 Virginia legislature. I'm a member of the house of
2 delegates. I'm here for a couple of reasons today. The
3 first, of course, being the health and safety of miners, but
4 also as a state legislator I deal with all types of
5 legislation, including many mining laws.

6 So I've had firsthand experience with proposing,
7 drafting and adopting rules and regulations to hopefully
8 make life a little easier for the citizens of our state.
9 For some time, we as miners have asked MSHA to get involved
10 and to help make an unjust, one-sided and what most, with
11 maybe the exception of coal mine operators, consider to be a
12 totally unfair, unlevel playing field. The health and
13 safety of the miner must always be first and foremost.

14 We're not asking for anything special. All we
15 want is what we deserve. That being fairness and equity.
16 But to do this, many things must be mandated by law. As a
17 legislator, it is my opinion that you have failed to do so
18 in your proposal. Other than parts of the plan verification
19 and single shift sample language, the rest of the rule is
20 quite vague.

21 As I read the rule, I also noticed that you
22 failed to adopt major parts of what the Secretary of Labor's
23 advisory committee recommended. It may be in the preamble,
24 it may be in the question and answer section, but it is not
25 in the rule itself. And I can tell you from experience that

1 if every T is not crossed and every I is not dotted, the
2 rule can and most likely will be challenged in court.

3 If all of these things are not actually part of
4 the rule, the document is not worth the paper it was written
5 on. During our time in legislative session and throughout
6 the year, I see many miners come to the state house for
7 help. They need help because their lives have taken a
8 drastic change. They have been stricken with deadly black
9 lung disease. Many can't make it across the capital without
10 stopping several times to catch their breath, and most are
11 carrying portable oxygen bottles with them.

12 They would hope, as I would, that the whole
13 intent of this new rule is to make miners' exposure to
14 deadly coal dust less, less than it was and has been in the
15 past. But the rule seems to be going in the opposite
16 direction. The 2.0-milligram standard can now be as much a
17 4.0-milligram standard. Miners are now going to be forced
18 to work in a more dusty area by being forced to wear a
19 powered air-purifying respirator with a NIOSH-approved
20 filter.

21 Can't you see this is a real problem? We have
22 miners wearing these helmets right now, in my mine, because
23 they feel threatened with a 2.0 standard. Now we are going
24 to allow double the dust? How will this raise the miners'
25 confidence? The other problem is the new NIOSH-approved

1 filter. It fogs up the shield, because it restricts the
2 flow of air too much.

3 So now we will be having miners using cut up
4 rags instead of filters. This will cause a higher number of
5 black lung victims passing through Charleston, because
6 adequate protection is not being provided properly. This is
7 just one example of the flaws of this proposal. I believe
8 MSHA needs to go back to the drawing board and one, follow
9 the advisory committee recommendations and two, listen to
10 the miners. We already have over 1,500 miners dying every
11 year from black lung. That's about one miner every six
12 hours, dying the most horrible death that anyone could ever
13 imagine.

14 And I don't know how many of you have friends or
15 family that have died from this horrible disease, how many
16 of you have sat and talked to those individuals, but if you
17 want a real reality check, go into some of the coal mining
18 communities, go to some of the black lung clinics and see
19 what a horrible last few years of life these individuals has
20 had to lead for working their entire lives in the coal
21 mines. That is a reality check. It's comparable to a fish
22 out of water. And I think if you go back and visit with
23 these folks, you'll have a much better understanding of why
24 the United Mine Workers have fought for so many years to
25 clean up dust in our coal mines.

1 Again, listen to the miners. This is a tool
2 that is to protect their health and safety. It is not a
3 tool to protect the bottom line for coal operators. Thank
4 you very much.

5 MR. NICHOLS: Thank you, Mike. Our next
6 presenter will be Harry Powell, also with the United Mine
7 Workers of America.

8 MR. POWELL: Good morning, my name is Harry M.
9 Powell. I'm with the safety committee at the Cumberland
10 mine, District 2, Local 2300. Joe Main spoke earlier about
11 the confusion that miners have concerning the MSHA proposal.
12 There is confusion. I haven't read it yet. I haven't seen
13 the whole thing yet. And nine chances out of 10, whenever I
14 do get the opportunity to see it, I still won't understand
15 it all.

16 However, what I do understand and what I do know
17 about is when is running a sheer and wearing a dust pump
18 pass after pass after pass. That is where my expertise
19 lies. Being a former assistant fire chief and being able to
20 move fire and smoke with water, I said to myself on one of
21 those many, many faces up and down that face, surely I can
22 move dust the exact same way.

23 U.S. Steel Mining Company, who owned Cumberland
24 Mine prior to Cypress, prior to RAG, had a program which was
25 called the Score program, whereas, if you came up with an

1 idea that would enhance and increase productivity, you were
2 awarded a check anywhere from \$1,000 to \$15,000. I came up
3 with an idea of controlling dust basically the same way I
4 was able to control smoke as a fire fighter. Our dust
5 samples were under 2.0 consistently for a number of passes,
6 for a number of samples. As a matter of fact, I can
7 honestly say that I wore a dust pump for weeks upon weeks at
8 a time trying to find out how this was done.

9 What the company allowed me to do, what the
10 company allowed the United Mine Workers to do for a very
11 brief instant in history, was allow the United Mine Worker
12 to control the dust parameters and to have full run of
13 modifying and putting any kind of controls on the sheer.
14 What the company did was they went back to the basics. They
15 allowed the person who was running the machine to dictate
16 and say where the problem lies.

17 The first check that I received from U.S. Steel
18 was for \$9,750. The general manager and superintendent and
19 I and the president of U.S. Steel Mining Company became
20 close friends. We were on a first name basis. I also had
21 the phone number of the president of U.S Steel Mining, call
22 me anytime Harry, whenever you want.

23 I was given an ultimatum. If the longwall
24 stayed in compliance for six months, I would receive another
25 check. Not if you or your crew remained in compliance, if

1 the longwall remained in compliance for six months, you
2 would receive another check, I was told. Needless to say,
3 my second check was for \$6,649.50. And I have to add that
4 Disney World is quite lovely at that time of the year.

5 The speed limit on most interstate highways is
6 55 to 65 miles per hour. However, some of us, through human
7 nature, intend to travel 70 to 75 miles per hour. Our dust
8 levels now are at 2.0. If they're allowed to go to 4.0, we
9 all know how human nature is. I hope I am not naive in
10 thinking that MSHA will protect and watch over miners. I've
11 only been on the safety committee a little over a year.

12 What I ask is that the dust levels do not be
13 permitted to go to 4.0 milligrams, and in addition, that
14 dust sampling not be reduced by MSHA. Thank you very much.

15 MR. NICHOLS: Thank you, Harry. Our next
16 present will be Mike Ayers, also with the United Mine
17 Workers of America.

18 MR. AYERS: Hi. My name is Mike Ayers,
19 A-Y-E-R-S. I am a member of Local Union 1702, District 31,
20 29 years mining experience, 25 years underground. I had
21 some written comments here. I'm not going to bother to read
22 them. Most of you, you've been hit with the same ones over
23 and over. The one question I have, and reiterate what Joe
24 and Mike Caputo said, if it's not in writing, if it's not
25 part of the rules, who's going to enforce it?

1 I've heard Marvin make comments, and Ron, and
2 George, how they would do it, but are you going to be here
3 forever? None of you is planning on to retire? No one
4 plans on dying? We need it in writing. We need it in black
5 and white. Your answers. I'm comfortable with your
6 answers, but whoever is in control is who sets the policy.
7 If you're gone tomorrow, there may be a different policy.
8 That's all I have to say.

9 MR. NICHOLS: Thanks, Mike. It we put it in
10 writing, do we have a deal?

11 MR. AYERS: Ask Joe.

12 MR. NICHOLS: Joe's shaking his head yes. Our
13 next presenter will be Randy Bedillion. I may have
14 butchered that name also.

15 MR. BEDILLION: It's closer than a lot of people
16 get.

17 MR. NICHOLS: Okay. Also with the United Mine
18 Workers of America.

19 MR. BEDILLION: I've got 25 years in the mine
20 this year. When I started back in 1975 at Valley Camp, of
21 course the mining site rules were all different, and I used
22 to see this guy standing in that dust and in the last years
23 that's went by, even on the wall, I've seen these dust
24 parameters drop, which is a plus, and it's due to the
25 controls. And I was going to ask about, I was going to ask

1 George that a statement he had made earlier that if a sample
2 comes at 1.71 or under, that area's not to be sampled again,
3 if it goes beyond the 2.0, that area is to be sampled again.
4 Am I correct on that, George? It's what you're saying now,
5 but where does it say it in black and white that that's the
6 way it's going to roll?

7 MR. NIEWIADOMSKI: Well, the, the reference to
8 the 1.71, that's in the rule and it basically identifies the
9 criteria we're going to use to determine whether or not that
10 plant should be approved or rejected. There's nothing in
11 the rule, that's correct, that says exactly how is it that
12 we're going to be doing compliance sampling, what levels are
13 we're going to be citing and what levels are we're going to
14 be actually going back to resample. That's not in the rule,
15 that's correct. That would be in our, which they are, in
16 our inspection procedures.

17 MR. BEDILLION: And then again, those
18 procedures, when the guys that are in charge today go, those
19 procedures could change by the next guy coming down the
20 line.

21 MR. NIEWIADOMSKI: Those procedures could
22 change, yes.

23 MR. BEDILLION: And another point I want to
24 make. I've seen companies do this, and it's more or less
25 like the snowball rolling downhill. It don't do nothing but

1 get bigger. And I don't feel that our samples ought to go
2 beyond the 2.0 to 4.0, because the next thing they're going
3 to ask for is 6.0. And whether we put an Airstream helmet
4 on or not, that just gives them a scapegoat, and that's my
5 beliefs on that.

6 I think that's a part of the rule that we don't
7 even need. They can, like Brother Harry said, they were out
8 of compliance with their methods, that they have the modern
9 technology now and they can get back in compliance. And it
10 don't make my lungs any worse. That's all I've got.

11 MR. NICHOLS: Thank you, Randy. Our next
12 presenter is John Ealy, also with the United Mine Workers of
13 America.

14 MR. EALY: I've got a letter here, which I think
15 I'm going to submit to you, okay? I'm not going to take
16 time to read it all. I've worked at Cumberland Mine now for
17 and 23 years, about 24 years underground. Used to work the
18 face, and now I work out-by, spend a lot of time on the
19 belts. I calibrate CO monitors and take care of the AMS
20 systems primarily in the mine.

21 And one thing that's been bothering me pretty
22 much all day is the technology, I believe, is there to have
23 continuous monitoring systems on the dust control plans.
24 I've been at Brewston with Joe Main and talked to some of
25 the people in NIOSH and, like I said, I believe it's -- the

1 company had no problem finding a way to have an AMS system
2 in a gas-filled environment and moisture and all the other
3 rock, dust and salt when they wanted to raise the methane
4 level from 1 percent to 1.5 percent in return.

5 And I believe it's just a commitment that they
6 have to make to be able to make that available for us. And
7 like Tim said, it takes quite some time for a dust sample to
8 actually come back, where if we could continuously monitor
9 this condition, I think we could better control what
10 happened to us in the immediate future, you know. I think
11 it's time that we could try to do something like, that's one
12 of the areas, I guess, that everybody has said everything
13 else I'd like to say, which I don't need to and I'm not
14 going to take time to do that, but Tim made also a good
15 point there.

16 Just, you know, talk to yourselves. I know you
17 don't work in the mines, and the black lung is still alive
18 and well in the coal mines. And through all these proposed
19 rules, search your soul a little bit and make sure that
20 you're leaving it better than it was. You know, I mean
21 everybody has to do it on an individual basis. I'll leave
22 this with you, and thank you for your time.

23 MR. NICHOLS: Okay. Thank you, John. Our next
24 presenter will be Larry Steinoff, also with the United Mine
25 Workers of America.

1 MR. STEINOFF: Hello. My name's Larry Steinoff.
2 I work for the RAG company at the Emerald Mine, Wayneboro,
3 PA. I've been here since November 1978. I'm currently
4 employed as a UMWA mine examiner, and I also have my system-
5 mine certification for Pennsylvania.

6 I started my mine career in the Sanford Mine in
7 Bobstown in April of 1974 at the age of 19. In my 26 and-a-
8 a-half years of mining experience, I've operated many types
9 of mining equipment and have done many different job
10 classifications, both at the face and out-by areas. Since
11 I've been at the Emerald Mine, I've spent six and a half
12 years on the mine rescue team and also five years on a fire
13 fighting team. I am currently vice president and also the
14 chairman of mining health and safety committee for our Local
15 Union 2258.

16 To start with, the proposal dust rules, they are
17 very confusing to me, to say the least, and very complicated
18 to understand. I am a miner who needs to understand rules.
19 To start with, MSHA proposed to sample face area people 480
20 minutes a shift six times a year, which totals 2,880 minutes
21 a year, which is 48 hours per year. And our out-by people
22 only once per year. As you can tell, I'm not a speaker, I'm
23 a nervous wreck.

24 At our mine, our current work schedule consists
25 of 10-hour days six days a week 50 weeks a year. This

1 totals up to 3,000 hours per year, or 180,000 minutes, which
2 under the current proposal would leave 177,120 minutes, or
3 2,952 hours per year the face people work that are not
4 sampled for respirable dust. At the present time, --
5 operators are required to sample face people at least 30
6 shifts per year, and under the proposed rule, we don't have
7 to. The MSHA funding for the dust sampling is not even
8 guaranteed at this time.

9 Continuous monitoring systems. With the push of
10 a button on my computer telephone, I can send information to
11 any part of the world in a matter of seconds, but they say
12 continuous monitoring is not present at this time. I have a
13 hard time believing that we do not have the technology and
14 capabilities to do this. The same way we monitor methane,
15 CO and air current in the mine, this needs to be done so
16 that when dust levels exceed the legal limits, adjustments
17 can be made at that time and not days or weeks later.

18 The same precautions we currently take for
19 ventilation of methane in the mine so that when trouble is
20 spotted, it can be handled and corrected. And I am also
21 troubled by the part 90 in the proposed dust rules for our
22 miners and that the dust level could be raised from the
23 current 1 milligram to 1.26 milligrams. To protect these
24 individuals, the current regulation of 1 milligram should be
25 cut in half, and more if needed.

1 I believe MSHA needs to seek new methods of
2 controlling dust in mines. Engineering controls are not out
3 of reach. The most trouble I see in -- is not maintaining
4 what we currently have. Water spray systems, air current
5 and velocities. Our coal companies spend millions of
6 dollars on longwall face equipment and they can produce as
7 much coal as possible and make their huge profits and
8 bonuses. I say spend some of the money on controlling
9 engineering.

10 The reason we have the Coal Mining Health and
11 Safety Act of 1969 is very clear and simple to me. Too many
12 miners in the course of their employment were either
13 injured, killed or suffered long-term effects of float coal
14 dust and other hazards and then would die a very slow and
15 painful death. The key issue here is preserving the health
16 and the safety of our coal miners.

17 I've seen a lot of improvements in the mines in
18 my 26- and-a-half years as a coal miner, but I believe that
19 for the most part that the new proposed dust rule is not one
20 of them. I believe that somewhere along that line that MSHA
21 has forgotten the most valuable of all resources, the coal
22 miners. We are currently mining six to seven million tons
23 of coal per year, and any way you cut it, that adds up to a
24 huge amount of coal float dust.

25 Miners' representatives participation. I was

1 very concerned about not being able to afford the
2 opportunity to represent some 400 coal miners of our mine
3 when sampling occurs. We are elected to serve them as their
4 mine health and safety representatives and they not only
5 expect us to represent them and to participate in anything
6 that could lessen their chance of injury or illness, they
7 deserve it.

8 We are the ones who give this country electric
9 power we need for today's demands. For this, we get
10 proposed higher dust regulations and fewer samples taken.
11 In closing, I would recommend that the recommendations of
12 the advisory committee appointed by the Secretary of Labor
13 to be considered concerning these proposed dust rules,
14 because I believe we all want to see the same result. The
15 health and safety of the miners, both men and women, mothers
16 and fathers, brothers and sisters, who give this nation our
17 most valuable resource, coal. Thank you.

18 MR. NICHOLS: Thank you, Larry. Our next
19 presenter will be Bob Kurczak, also with the United Mine
20 Workers of America.

21 MR. KURCZAK: My name is Bob Kurczak. I
22 represent the United Mine Workers of America, Local 1570,
23 Federal Number II mine, and I'm a member of the mine health
24 and safety committee at that mine. I just want to touch on
25 one specific issue, and the reason I'm doing this is I was

1 directly involved in the continuous dust monitoring pilot
2 program that was ran at our mine.

3 The continuous monitoring of coal mine dust,
4 which would provide instant information on dust levels and
5 record dust levels over a long period of time has long been
6 a demand of miners. These devices would provide miners with
7 invaluable information on levels of unhealthy coal dust in
8 their environment. With limited dust samples under the
9 proposed new rule, this would be vital in recording dust
10 levels miners are exposed to.

11 Results from coal dust samples can take days to
12 process. Instant information is needed so prompt action can
13 be taken to control unhealthy coal dust levels. The
14 advisory committee recommended development, testing and
15 immediate deployment of such monitors. The advisory
16 committee concluded that continuous monitoring of the mine
17 atmosphere and the control of dust parameters offered the
18 best long-term solution for improving the existing federal
19 program to prevent black lung among coal miners.

20 Over the past years, machine-mounted systems
21 have been developed and tested in a number of mines, and
22 which I mentioned, we had a system at our mine. I will
23 admit this, the thing did have some problems, but I was
24 assured, I was in contact with the people from NIOSH, and
25 they told me that these things could be corrected. As a

1 matter of fact, the government agreed to issue a contract to
2 complete the work on this system, and for some reason, MSHA
3 and NIOSH did not follow through with this plan.

4 In closing, I would like to say that the Mine
5 Act gives MSHA the authority to issue technology-driven
6 rules. It is clear that if MSHA does not issue such a rule
7 requiring these devices, they will never get into the coal
8 mines. Thank you.

9 MR. NICHOLS: Thank you, Bob. Our next
10 presenter is Chuck Hayes, also of the United Mine Workers of
11 America.

12 UNIDENTIFIED SPEAKER: He did his earlier.

13 MR. NICHOLS: Okay. Then our next presenter
14 will be Nancy Dorsett, and my note says WVA.

15 MS. DORSETT: I'm going to sit here, because
16 I'll never reach that microphone. My name's Nancy Dorsett.
17 I'm a graduate student at West Virginia University in the
18 department of mining engineering. I also spent 18 years
19 working underground, five of them on a longwall. Necessity
20 is the mother of invention, and if we do not demand
21 engineering technology, it won't be produced. If we give
22 the operators a way not to improve technology, then there
23 will be no demands from the operators to the mining vendors
24 to improve levels of dust, water control, design and
25 shields.

1 And we have run into that problem with the
2 hearing rules and the noise rules. By allowing personal
3 gear to go in the place of engineering technology, we have
4 set back noise control in the underground coal mines. The
5 stone and quarry people are much further ahead of us in
6 noise control. So if the operators cannot -- do not demand
7 that the vendors change, then there will be no change, there
8 will be no new technology, and we'll all be wearing
9 Airstream helmets before long. Thank you.

10 MR. NICHOLS: Thank you, Nancy. Our next
11 presenter is Red Knicely, also of United Mine Workers of
12 America.

13 MR. KNICELY: My name is Red Knicely. I'm a
14 25-plus-year coal miner. Ladies and Gentlemen, I know what
15 black lung is, seeing as to how my grandfather, father and
16 three uncles were lost to this disease. For you all to cut
17 sampling to six times a year, when we produce coal at our
18 coal mines an average of 900 shifts a year, we produce coal
19 around the clock six days a week.

20 The conditions change hourly when we're
21 producing coal. Barometric pressure, temperature, you know,
22 we can't control it within eight hours, and you're telling
23 me that you're only going to sample it six times a year.
24 That's not acceptable. We're going backwards. Is somebody
25 going to be standing here in favor of you 30 years from now

1 talking about me succumbing to black lung? No, I think not.

2

3 Those changes that you're proposing diminish the
4 protection miners already have. So like I said, black lungs
5 is going to be on the increase instead of the decrease. We,
6 the miners, have been trying for years for more
7 participation in the dust sampling program. The miners
8 being the ones that suffer and fall victim to black lung, we
9 should have input, but the rule contains no standard
10 providing miners' reps with increased rates in this
11 procedure.

12 You all said that we could travel. If an
13 inspector does not have an AR card, we have no rights. This
14 is, I'm talking at the union mines. Nonunion mines are even
15 less. We have a NIOSH investigation going on now at our
16 coal mines, you know, for different stuff underground that
17 we feel is harmful to us. We cannot even travel with them,
18 Ladies and Gentlemen. I have to remove myself, put myself
19 on union business to be able to travel with them.

20 The miners have been asking for continuous dust
21 monitoring. The rule contains none. The advisory committee
22 recommendation number eight called for this rule. In
23 closing, all one has to do is visit the hospitals, the
24 clinics within the coal fields to see what coal dust will do
25 to a man and his family. To go back -- we need to eliminate

1 black lung. Thank you.

2 MR. NICHOLS: Thank you, Red. Let's break until
3 12:30. That's 10 minutes.

4 (There was a short recess.)

5 MR. NICHOLS: Okay. Let's get started back.
6 Our next presenter will be Rick Altman, also with the UMWA.
7 Is Rick in here? Rick Altman? .

8 MR. ALTMAN: I'll be brief. I just have a
9 couple questions. On what is it, number six I think, on the
10 faces, if they can't come into compliance we'll go with the
11 air helmet. Has anybody given thought to, let's say this
12 goes on for a couple panels.

13 UNIDENTIFIED SPEAKER: They can't make it.

14 MR. ALTMAN: They can't make it. Once again,
15 they're granted the air helmet. Over here on another part
16 of the mine, they have it mapped out for a 1000-foot face,
17 10,000 feet long. Now, they've got to submit a plan for
18 that. Is there any reason why that plan would then be
19 permitted. If they can't meet the requirements at this
20 point in time, why would a plan then be granted if they
21 can't meet the parameters. Would it be? Or I guess my
22 question is would it be granted?

23 MR. NICHOLS: I don't seem to be having any luck
24 with Airstream helmet issue. Do you want to try it?

25 MR. SCHELL: You know, our initial sense was

1 that we were going to push engineering controls as far as we
2 could. Only if engineering controls, only if they had all
3 been implemented and didn't work, would we go to either
4 administrative controls or recals (phonetic). If that goes
5 on for some period of time, I think it may likely be that
6 the agency would consider things about production.

7 But that would not, the way we structured the
8 rule, production was not one of the initial considerations
9 that we made in terms of whether you would go to
10 administrative controls or to recals. So that may be
11 something we need to consider. So your comment's well
12 placed, but I would think after some period of time, that is
13 something we'd have to consider.

14 MR. ALTMAN: Well, my reasoning for this is
15 nobody submits for a shortened face. Everybody submits for
16 a longer one and further out, right? A deeper panel, a
17 longer panel. How many of these mines that have submitted
18 for a longer and deeper panel have subsequently submitted
19 that they can no longer meet these requirements and want the
20 Airstream helmets? Do you know?

21 MR. SCHELL: Not many, I'm sure.

22 MR. ALTMAN: Apparently there must be some,
23 because there's a heck of a lot of people using them
24 apparently. And when I read it, I was reading about the
25 epidemiology studies, there's really not a whole lot on that

1 in what you gave out, and there's -- you can't find it on
2 the Internet.

3 MR. SCHELL: Restate your question. Maybe I
4 missed your question. That you just stated.

5 MR. ALTMAN: Oh, the studies? What you have, or
6 what I received, I'm sure that's not the complete study. I
7 mean the excerpts that you gave us, I'm sure that's not the
8 complete study. Is that correct?

9 MR. SCHELL: That's correct.

10 MR. ALTMAN: I couldn't find it anywhere to be
11 able to get the complete study. And I'm sure really that
12 there should be good reasons that we should be able to look
13 at those also. A lot of people here today, here's the sad
14 part. Scientific background, technically we don't have. We
15 are the guinea pigs, we are the rats. We are. Except we
16 stand upright. And I've sat through I don't know how many
17 of these. I've listened -- and I think you were down here
18 in Morgantown a few years ago on the diesel regs. I think
19 you were there.

20 MR. SCHELL: I don't think I was.

21 MR. ALTMAN: Okay. Well, I apologize. And
22 here's, here is, I guess the part that infuriates me the
23 most. We come down and we say what we think we feel we
24 know, okay? They're not a person here that's got an M.D., a
25 Ph.D. Well, maybe there is, I don't know. Okay, I take

1 that back.

2 We are the best case studies in the world. Time
3 and time again we fall on deaf ears. We fell on deaf ears
4 during the diesel. What do we know? We're dumb coal
5 miners. We're not that dumb. Now here we are once again.

6 There's no operators. I have yet to hear
7 anybody from any coal operator come and speak dot. They
8 have said nothing. So if nothing is said, I take that as a
9 good sign that they think this is basically pretty good.

10 What you hear is, from the people here, and
11 we're telling you that this kills us, okay? It kills us.
12 And I'm not a betting man, all right? But I'll bet this.
13 I'll bet this falls on deaf ears, and I'll bet nothing goes
14 on and I'll bet we'll die. I'll look around this room, and
15 there will be people here that I have worked with, people
16 here that I have met, people here that I call friend, and
17 they're going die if you people right here, Alan, Ron,
18 Larry, everybody else, Rebecca, don't finally step in and
19 say, look, these are the people that we have to protect.

20 And I have yet to see that happen in a very long
21 time. And I'm not brand new out of the gate. I've been
22 around long enough. If the operator says we want a longer
23 panel, if they can't meet the air, stop it. It's a done
24 deal. If they're out of a job, we're out of a job, you're
25 out of a job. It's that simple. We're all out of a job.

1 Nobody wants to be out of a job, but nobody wants to die.

2 You're in an office. We're underground. You do
3 the studies. We do it real life. We deserve, really, for
4 once, to be heard, to be recognized and for the things that
5 are said and the things that are done to be put forth as
6 credible evidence, and we'll never get that. That's really
7 all I've got to say, other than really, like, for once, give
8 us a break. Thanks.

9 MR. NICHOLS: Okay. Thank you. Dennis O'Dell
10 has asked to give additional testimony, and he can do that,
11 so Dennis, come on up.

12 MR. O'DELL: Good afternoon. My name is Dennis
13 O'Dell. I am an international health and safety
14 representative for the United Mine Workers of America. I
15 have 25 years experience in mining. In 1996, I stood before
16 you and spoke as a rank and file miner. Today, I stand
17 before you and speak as a representative on the
18 international staff.

19 I would like to thank the committee for this
20 opportunity on what I believe may be one of the most single
21 most important issues that deal with the miners all across
22 this nation. We, meaning miners, who are under the
23 jurisdiction of the Department of Labor Mine Safety Health
24 Administration have always been very grateful for the
25 protection that your agency has had to offer us. By far, we

1 know that we are blessed with what is known throughout the
2 world as probably having the safest coal mines to work in.
3 And a lot of this should be, and is, credited to your agency
4 and the inspectors who are on the ground every day trying to
5 enforce the code known as C.F.R. Part 30 which is used for
6 protecting miner safety.

7 With saying that, it also needs to be pointed
8 out all of us -- when I say we, I speak of everybody in this
9 room -- have missed a part of the Act somehow in failing to
10 protect the health of the miners. Miners today are still
11 dying, not just from roof falls, fires, explosions or other
12 mine-related injuries, but miners are still dying of
13 health-related illnesses such as black lung.

14 I truly believe that you were trying to do
15 something somehow to fix this by producing this proposed
16 rule that we have before us, but unfortunately it's fell
17 short in getting done what you've attempted to do. This
18 proposal, as you've heard today by many who have testified
19 before me, is considered to be quite complicated and
20 considered to have fell short of the mark. Many people, for
21 example, the miners, lawyers, representatives and the
22 general public are not really sure as to what it says.

23 To further complicate the issue, there was a
24 limited time to digest and to try and understand exactly
25 what you are saying with this proposed rule. The biggest

1 most single question I keep hearing is what is the actual
2 rule and what is just preamble or Q and A's? What is
3 enforceable, what is not? The preamble addresses a lot of
4 things but, as we are all aware, inspectors, the very guys
5 that are on the ground trying to enforce the law, cannot say
6 to preamble. Judges will and will continue and have implied
7 that if it was intended by the law, then why wasn't it made
8 the law.

9 Does anyone in this room remember what happened
10 with the new ventilation regs. Do you remember the nice
11 little blue Q & A book that was given to everyone. Well, it
12 ended up being nothing more than just a document used for
13 bathroom reading. That's about all it become worth. It
14 wasn't something that could be used for enforcement. Has
15 anyone in here ever seen a citation using the blue Q & A
16 book in the body of the citation as to what the company
17 violated? And I think you'll find the answer is no.

18 That's what I not only fear but what I know will
19 happen with this new proposed dust rule. Another need is to
20 fix the exposure limits. We went from a mindset of asking
21 for a 1 milligram standard four years ago to now giving up a
22 2 milligram standard and possibly allowing as high as a 4
23 milligram standard. We asked for samples to be taken for
24 entire shifts at the 2 milligram standard, and you gave us
25 an entire shift sample with a 2.3 milligram standard, we

1 think.

2 And the flexibility for the operator to be in
3 excess of 115 percent of the quantity specified in the plan,
4 and to allow exceeding the production levels as specified in
5 the plan by 32 percent. And if I read it right, it's not
6 until 33 percent of the production shift's exceeded that
7 triggers a new plan verification, which I may add, is at the
8 discretion of the MSHA district manager. Where are the
9 gains for worker protection here?

10 Another point. Once the operator submits his
11 plan to the district manager, the district manager will give
12 the operator what is called a provisional plan approval to
13 operate under until such time as an MSHA inspector can come
14 to the mine and sample. We have over 700 plans that will
15 have to go through this process, so it's going to be a while
16 before they can get to all these mines.

17 Then, MSHA will call the operator and tell them
18 the day and the time that they will be on the property to
19 sample, which to me, is prior notification, no matter how
20 you look at it. Why? If the field offices have all this
21 collection of data on a mine in their districts, based on
22 past history of dust sample inspections and the district
23 manager feels comfortable giving a provisional plan approved
24 by telephone or e-mail or whatever -- you get the picture --
25 and it's okay to operate under this plan until MSHA can

1 sample, then please answer in my maker's name, why do you
2 have to notify the company you're coming?

3 You tell us on one side that this is the best
4 thing since the creation of sliced bread, yet you don't feel
5 comfortable enough to go to the mine unannounced with the
6 very thing that you've approved. But I don't know why that
7 would be a problem, because, guess what, on the date of the
8 verification sampling and the operator doesn't have in place
9 what he has submitted, it's no biggie, because one, he can
10 adjust his parameters at that time or two, he can make no
11 adjustments. In other words, whatever it takes for the
12 operator to comply on that date, he is going to be allowed
13 to do. And it doesn't matter, because MSHA is not going to
14 cite the operator.

15 MSHA's just going to let them try it over again
16 until they get it right. I'll tell you, this type of brute
17 enforcement would really scare Mr. Profit Coal Company to
18 shake in his shoes. And you'll have to forgive me, but I
19 stole that quote from my 11-year-old daughter when I
20 explained this part of the proposed rule to her.

21 Now what about the miners' participation? Do
22 you realize that right here in Morgantown, West Virginia,
23 just across the hill, we're in a dogfight at this very
24 moment at Consol's Leverage Mine to have 103(f) walk around
25 rights recognized for the mine fire investigation? In 1997,

1 MSHA came out with some inspection codes, for example, AFD,
2 that aren't clear as to if we have walk around rights or
3 not. We believe we do, but we're awaiting a more clearly
4 defined answer by a higher authority.

5 The bottom line is the company said we don't and
6 MSHA's not sure. Does anyone in this room think that the
7 operators won't challenge our participation on this rule?
8 They've already stated publicly that they think we don't
9 have the right, and why shouldn't they challenge it? It's
10 mentioned in the preamble, but it's not mentioned in the
11 rule. This needs to be fixed before a rule is released so
12 that there is no mistake to the so-called intent.

13 You need to address all the miners' activities
14 the advisory committee has recommended, such as the
15 verification visit, where miners and the rep should have the
16 same paid 103(f) walk around rights. The miners'
17 participation in the interim of the operator dust sampling
18 program. That should be increased to provide assurances
19 that a credible and effective dust sampling program is in
20 place.

21 Miners designated as representing the miners
22 should be afforded the opportunity to participate in all
23 aspects or respirable dust sampling for compliance at the
24 mine without loss of pay, as provided by the section 103(f)
25 in the Federal Mine Act. Miners reps should also have the

1 right to participate in dust sampling activities that will
2 be carried out by the employer for verification of dust
3 control plans at no loss of pay. Miners reps should also
4 have the right to participate in activities involving any
5 handling of continuous dust monitoring devices or extraction
6 of data for continuous dust monitoring devices without loss
7 of pay. We need to bring that back.

8 The point that was raised by the advisory
9 committee where miners reps should receive training and
10 certification. That's not been brought up today. To
11 conduct the respirable dust sampling paid by the employer,
12 miners reps should be afforded the opportunity to do that
13 without loss of pay. I sat in the back early on, so I'm not
14 sure if Mr. Nichols or Mr. Schell have addressed all these
15 points that I brought up, so I'm being repetitive on some of
16 the things, please forgive me.

17 A question that comes to mind is that somebody
18 had said, if it's in the preamble, that's what the entire
19 implied intent was. MSHA can't write regulations on
20 themselves, I heard somebody say. But I think if you look
21 in here, you'll find several places in, or some places in
22 part 30 where MSHA does have regulations on themselves. If
23 I'm wrong, please correct me.

24 The Airstream helmet issue. I'm curious. I
25 wonder if we're trying to cross a fine line, because it

1 sounds like what you're doing is you're going to mandate a
2 work practice. And let me clarify what I mean by this. If
3 we have a miner that's found to be in an area where
4 Airstreams are required and he doesn't have that Airstream
5 helmet on, will MSHA cite the plan? And if you don't, it
6 leaves -- and if he does cite the plan, it leaves that miner
7 open for disciplinary action against the company.

8 Now that's a two-fold problem, because miners
9 sometimes fill in at last minute for other miners on these
10 jobs. So this individual that may have been fine without an
11 Airstream helmet may not have been properly trained, may not
12 have known, because he's not the regular person that works
13 there on a day-to-day basis. There's been press
14 announcements by MSHA that they are taking over compliance
15 dust sampling programs.

16 Exactly where in the proposed rule is that
17 standard that miners can read? What legal and finding
18 guarantee exists to ensure miners that MSHA will be doing
19 the compliance sampling they say they will be doing? Since
20 MSHA has stripped the entire compliance dust sampling
21 procedures from the rule, then how are miners supposed to
22 know what the rules are? Why has MSHA no rule to conduct
23 compliance by monthly samples for the full shift? What is
24 the production level required on the MSHA -- when MSHA
25 conducts compliance samples and when they conduct abatement

1 samples. Specifically, what rule will cover that?

2 Part 7100 A and B and part 9100 states that mine
3 operators has to keep miners' respirable dust level at or
4 below 2 milligrams and 1 milligram out-by the working faces
5 for the part 90 miners. Does MSHA plan to raise those
6 compliance levels on sampling for miners' exposures? If so,
7 exactly where can miners find that specific standard in the
8 proposed rule or in the preamble. The specific sections in
9 part 70 and 90 that was eliminated from title 30 should be
10 re-entered into the record?

11 Miners no longer have standards to rely on, and
12 miners have no intention to eliminate the dust sampling
13 program. It's important to do compliance sampling often.
14 If not, the verified plan will fall off to the wayside.

15 As a representative of thousands of miners, I
16 have been asked to come before you today to ask you to go
17 back to the table, fix the problems that I and many of the
18 other miners today have raised, show us where these will be
19 guaranteed black and white fixes, show us how this will be
20 funded by the government so that we will not lose everything
21 in the end, because we all know it's an election year.
22 Administration changes, all kinds of things can happen. And
23 truly do something that will end this deadly killer called
24 the black lung disease. Thank you.

25 MR. NICHOLS: Thank you, Dennis. I think we

1 understand your comments. Joe Main has asked for some
2 additional time to further comment on the proposals, and
3 Joe, come on up.

4 MR. MAIN: I tell you, this whole dust rule's
5 got me about wore out folks. I don't know who else has been
6 sleeping with this thing, but it's enough to drive a crazy
7 man crazier as the saying goes. I wanted to have an
8 opportunity at the end of the day just to clarify some
9 issues and to let you know we'll be dealing with additional
10 issues as we go into the hearings and probably be spending
11 some time on plan verification, I would say probably in
12 Kentucky, and walking through that.

13 I think one of the difficulties that we all had,
14 which I expressed and some of the other miners expressed
15 here is that there is such a vast volume of information
16 contained in those proposals, that it almost blows the human
17 mind to try to sit down in the course of 30 days to read
18 that and figure that out. And that's been one of our
19 dilemmas. And as Dennis and myself and Tom Wilson and Jimmy
20 Lamont and Judy Woodlan our lawyer and everybody else, we've
21 been trying to clarify all these issues that's came to us
22 from our folks who have heard things in the news, who have
23 read parts of the proposal and, you know, haven't had a
24 chance to put it all together.

25 And I do appreciate the opportunity, Ron, that

1 you guys have shown us to sit down and asked a series of a
2 lot of questions to try to get focus. But nonetheless,
3 everyone has to understand, there's a whole lot of miners
4 out here that really don't understand this rule yet, and
5 that bothers me, because it really is some very substantive
6 changes. And I read off real quickly. There's probably,
7 you know, 20 issues that's affected by this rule one way or
8 the other. And some good and some not so good, in our
9 opinions.

10 I think, too, that MSHA should not be surprised
11 that there was not a great rush to go out here to support
12 this package, for a number of reasons. One is that there
13 have been issues that the mineworkers and miners have had on
14 the plate for reform for many, many years. And we've not
15 been bashful about those. And we went to the Carter
16 administration, and we went to the Reagan administration and
17 we went to the Bush administration and to the Clinton
18 administration trying to get those fixed, and it was, you
19 know, a continual plea to fix those things.

20 And I only speak through the voices of the
21 miners. And what I try to represent is what the miners put
22 into my head through visits to mines and sitting down and
23 discussing these. So sometimes an issue will get labeled as
24 a union issue or a Joe Main issue. I'm here to tell you
25 there's a whole lot of issues that miners claimed a stake to

1 that I just speak on behalf of and for those that, you know
2 want to get a misunderstanding of what's going on here.
3 These are the miners issues that we what to have on the
4 record before it closes. It's just a ton of positions and
5 statements by the miner's that's going to reflect that. And
6 I think you will see that through out the hearing process.

7 As Dennis finished up talking about, you know,
8 the implementation of this proposal, there is an election
9 coming, there is people going to change, and though there's
10 certain people in government that I have come to trust and
11 to respect when they say something's going to be done, to
12 the extent they have the power to do that, there's different
13 people I do believe that that's, you know, take it to the
14 bank. The problem is, myself and most of the folks sitting
15 around here over the course of the rest of a lot folks'
16 mining careers, we're not going to be here, and this is all
17 going to be turned over for someone else to apply and
18 interpret.

19 And to the extent that a lot of this package is
20 contained in policy preamble and contained in discretion of
21 the agency, even in the rules themselves, it would be wrong
22 of me to tell my folks that I represent that they could
23 trust that as being the standard, because I know better.
24 I've been through some experience and Marvin and I could
25 share a lot of war stories here about a lot of those where

1 things have changed.

2 And I'm going to go back to 1980 when we came
3 out of the same arena, just finished up a public hearing on
4 comments, and the agency had announced a final rule and had
5 announced these promises that they were going to implement
6 on miner participation and developing the continuous
7 monitor. And to this day, I stand here and those are
8 nonexistent. And to this day, miners have asked me over and
9 over again, Joe, when are we going to get this, when are we
10 going to get that? And I just keep saying, we're trying to
11 convince the government here about what you folks really
12 need and want to try to figure out some way to get that
13 framed into people's mind.

14 Because at the end of the day it's the miners
15 who eat the dust and the miners who have been on that long
16 list of victims that's, I don't know, hundreds of thousand
17 long over the years that we've mined coal, and it's those
18 miners that, who had their families affected that deserve
19 some real stake in deciding how that coal mine is going to
20 be run to get them out of that dust. And so worker
21 empowerment is really, it's not a rhetorical issue, it's a
22 real issue that we believe needs to be captured by a good
23 set of rules.

24 And I was very disappointed to see that, at
25 least in what we had thought was coming out of the advisory

1 committee recommendations, that those were not captured. We
2 were disappointed in the fact that what we thought was laid
3 out, I think a fairly decent script for the agency to move
4 forward beefing up its role and then to actually take over
5 the mine operator program, at the very least doing the
6 frequency of sampling that they were doing, but we had hoped
7 for more.

8 And we'd also hoped for this magic continuous
9 monitor that I swear has been so elusive over the years, to
10 be brought in to where miners could actually see the dust
11 levels generated in the workplace, and we all come to
12 realize that we may not be able to use that for a compliance
13 tool that is sure a helpful tool to give, empower those
14 miners so they know what dust levels that they're in.

15 And it's a powerful tool to empower the mine
16 management folks at the mine to know, you know, when they're
17 creating and generating dust that needs to be controlled.
18 I'm going to probably wrap up talking about the continuous
19 monitor, but to get back to the policy issues, after the
20 hearings closed, we didn't get the rules, and some amazing
21 things happened. There were some policy changes in this
22 agency where decisions was made to reduce the actual dust
23 inspections that MSHA was conducting at coal mines. And I
24 think that was probably around '82 -- I'll go back and I'm
25 going to have that all sorted out before the record closes

1 -- but on the heels of hearing all these miners talk about
2 how bad this dust program was and we left it in the hands of
3 the operators, did far less sampling, the agency made a
4 policy decision to reduce dust sampling at coal mines.

5 And that same policy decision that happened back
6 then could easily happen two or three years down the road
7 when someone else could say things are going better, we
8 don't need to spend all this money sampling the dust
9 environment. And that's very troublesome.

10 We've been there before and we do not want to
11 repeat that bad decision that was made. We talk about the
12 ventilation regs, I know Dennis raised those earlier, and I
13 remember when we were in a big debate over bleederless gobs,
14 and that was sort of like one like engineering controls for
15 longwalls that people just sort of wanted to stay away from
16 in a way, but I remember the commitments made to our
17 organization and to miners that, don't worry, we're never
18 going to let those bleederless gobs get used in a gassy
19 mine.

20 In October of 1998, I had this petition for my
21 vacation come across my desk, and Jeff Duncan when he was
22 still with us, and we said, what the heck. And it was a
23 petition to raise the gas levels at a longwall mine to 4
24 percent and using a what they called a purging process. I
25 don't know how many of you read that, and Marvin, you may

1 have, but it never got finalized because much later, in
2 November, the mine was closed down by a fire. And we took a
3 look at that mining plan, and low and behold, on a two-entry
4 mining system in this country where an operator by his
5 claims in a petition had got behind on development and went
6 to MSHA and says, we need an approval to cut this panel off,
7 and the agency did that, connected over to the tailgate side
8 on a two-entry system, and they had a bleederless gob, which
9 the inevitable was going to happen, it kept gassing off to
10 the point that they now wanted a 4 percent standard instead
11 of the -- they were operating on some scheme that I still
12 never understood that they were having about 3 percent of
13 methane load up on the face.

14 Now I went back to the assurance that I had with
15 the district manager, and the message I got is, that won't
16 happen again. Well, it did happen the first time, after we
17 were told it wouldn't happen in a situation like that. And
18 that's going to be revisited, I think that this last episode
19 of the Willow Creek explosion that happened, but it was the
20 same mine that all this happened at, the one that blew up
21 last week.

22 So, you know, what this tells us, the history
23 tells us that you cannot take for granted the words of folks
24 in the government, that they be well-meaning,
25 well-intentioned, to be the way things are. And that's the

1 reason that it has to be in the rule. I know miners across
2 the country have complained about trying to get something
3 done at their coal mine, but they're told by the MSHA
4 officials, well, if it's not black and white there, we can't
5 do it. And we know that. We've heard that. It's been a
6 constant message.

7 And understanding that, while we have a chance
8 to influence what regulations come out, we shouldn't be dumb
9 enough on our end to agree to standards that puts us in that
10 gray area that does not give us clear-cut standards. On
11 respiratory protection, there's been a lot of discussion
12 about that, and I have been troubled for quite some time and
13 I've raised this with industry and I've raised it with the
14 government that I think -- set aside the discussion on
15 respirators for longwalls as alternative engineering
16 controls. We have a serious problem with our respiratory
17 protection in this country for the normal miner who is on a
18 section, whether it's a continuous mining section or a
19 longwall, that we fail to have the kind of quality
20 respiratory protection that we really need to implement
21 Section 202(h) of the law.

22 And my belief is what we need to do is spend a
23 lot of energy building a better respiratory protection
24 system that's worker-friendly, that does work for the
25 miners, that when we do go in and out of compliance, that

1 there's something there that miners can actually wear. And
2 that is a standard by which the protection is not mandatory.
3 That is a section where the standard, rather, calls for the
4 respiratory protection to be provided if the miner desires
5 to use it. And I think, as we said in the advisory
6 committee, we've got to do a much better education job than
7 what we've been doing on dust controls and using the
8 respiratory systems.

9 But we've got to give the miners something
10 that's comfortable for them to wear. I mean you look at a
11 miner today running around where we almost got part of them
12 in uniforms and suits like they are space people, and we
13 need to rethink that model. We don't need to be replacing
14 engineering controls. We need to be designing better
15 quality respiratory protection to fit within the scheme of
16 Section 202(h).

17 With regard to continuous monitors, at the 1976
18 convention of the mine workers in Cincinnati, Ohio, for a
19 few of us who are still around, there was a lot of
20 discussion about what it would take to fix the dust sampling
21 program, and one of the issues that came out of that
22 convention, which rounded up being a discussion point the
23 '78 hearings, was the application of a continuous dust
24 monitor in coal mines that would measure the dust on a
25 constant basis and give miners a constant knowledge of what

1 those dust levels were, for the obvious reason, miners want
2 to know what dust they're in.

3 And I think they're owed that, given the tragedy
4 of this industry. And so began the activity to build a
5 continuous dust monitor, which started, I guess, actually in
6 the late '80s -- or in the late '70s. The pledge was made
7 by the government in 1980 that we're going to aggressively
8 pursue the development of that, and it has peaks and valley
9 over the years. It got attention again. That was one of
10 the main issues that was addressed at the 1991 congressional
11 hearings. There was a piece in the dust task force
12 recommendations to build a continuous monitor.

13 And both NIOSH and MSHA, I think, began to
14 aggressively pursue that in the mid-'90s. What was so
15 disheartening -- and I have been involved in that process,
16 and I think I'm as familiar as anybody is from the outside
17 about what was going on -- but as we were closing the deal,
18 as the saying goes, to finalize the development of a device
19 that had proved to operate to the point that it could
20 accurately reflect the dust levels, but it had failed
21 because the machine just wasn't hardened enough to withstand
22 the machinery.

23 And I recall the meeting that we had in
24 Washington, D.C., and it was in February of 1999, and the
25 industry was there, Labor was there, NIOSH was there, MSHA

1 was there. And there was a whole discussion about where
2 we're at with the testing and the status of that device.
3 And as the meeting completed, there was general consensus
4 amongst all of that room that contracts needed to be
5 developed to go back and harden those units to finalize the
6 testing process. But for some reason, that has had
7 confusing answers since that February meeting. We later
8 found out that the government had abandoned the finalization
9 of the development of the continuous monitors. And we've
10 heard different reasons of why that happened. We heard
11 different theories about where this whole thing was going.
12 But for somebody that's been around this debate for 20
13 years, I am totally beside myself as to why, on the very
14 edge of finalizing this device, that the government
15 abandoned the final steps. And I believe firmly that we
16 knew enough out of the testing of those units that it's
17 technologically feasible to do that. I think the government
18 has stated that, both NIOSH and MSHA.

19 The fact is we just haven't got the units built
20 and in machines. It takes a regulation to pull that off.
21 And if the government hedges its bets and doesn't go that
22 final step to require regulation to implement it, no miner
23 out there will ever see that device. Maybe as a test
24 program somewhere in some mine. But that continuous
25 monitoring aspect that we thought was going to be part of

1 the finality from the advisory committee and what we've
2 hoped and put our trust in the government to build and get
3 in the mines, we still don't have it in the year 2000.

4 And I'm marveled, I'm one of these science nuts
5 and I watch these little robots take air measurements on
6 foreign planets -- I mean planets -- out in the universe,
7 and I set back and say to myself, if we can do that, we
8 can't finish up this dust monitor to monitor coal mine dust?
9 I mean there's just something illogical about, you know, the
10 whole science of that. We're going to be submitting
11 documents to the record, one of which is going to be a
12 letter from both myself and BCUA on positions taken with
13 regard to the continuous dust monitor. And I'll just read
14 this one excerpt that was contained in a letter to both
15 labor and industry.

16 "The current model demonstrated that feasible
17 technology exists for a continuous real time dust
18 measurement instrument. Further, the device was as accurate
19 as the current measuring system and was used by miners and
20 supervisors to gauge changes in dust levels and adjusting
21 engineering controls."

22 That means something. And it means more than, I
23 think, what the proposals is giving it credit for. And yes,
24 we are very disappointed that we're here in the year 2000.
25 That was a trek we started 25 years ago, and we got to the

1 edge, to the point where we're ready to deliver on that, and
2 it disappears, and the government's now saying, "sometime
3 down the road."

4 The proposals with regard to sampling of miners
5 and plan verifications, I think is confusing, and I was the
6 first to admit, it took me a while, and the of gracious of
7 Ron and a few others to, like, clear up how that process
8 worked, and we tried to pass on to our folks, but I think
9 there are some things that were said here today that still
10 may be left in a state of confusion in some folks' minds,
11 and I think it's important to clarify it. I think it was
12 Gene Davis that asked the question about, if that
13 verification sample passes that 1.71 test and that's the
14 first verification test, is the testing over for that MMU?
15 And the way I read the law, it is.

16 And there is no other verification test, unless
17 three or four things happen, and I forget exactly what all
18 they are, but those were all discretionary decisions of the
19 government to decide whether there's even any verification
20 test to be applied. There's no magic figure there that
21 automatically says that you go back into plan verification I
22 know of. And I may be wrong on that.

23 Now, having said that, that MMU has been, by one
24 test, verified to be a test that will operate to protect
25 that miner, with the backup being the bimonthly examination,

1 which will only be six shifts a year out of, I think Red
2 raised 900 shifts a year to mine. And, you know, from the
3 standpoint of does this make logical sense to have that kind
4 of a system in place that you're placing all that guarantee
5 on the limited dust sampling that will take place? And that
6 sample will only be a 480-minute sample. It won't be a full
7 shift sample, on the compliance sample that will be taken,
8 regardless of the length of the shift that Red's now
9 working, okay?

10 And if you go step back and say, what was the
11 advisory committee, when they crafted this plan, really
12 thinking of? What they were thinking of was a government
13 takeover of the operator plan at the very least having, you
14 know, the frequency of sampling, which was not six months --
15 or six shifts a year, and not having one shift out-by in the
16 coal mines, which is another major problem in itself that I
17 think it totally unacceptable to miners and to the mine
18 workers. It was having a plan verification system that
19 really worked, backup sampling by the operator, which we all
20 agreed as part of the advisory committee was still a
21 necessary component, not for compliance sampling but the
22 backup verification.

23 There would be a continuous monitoring system
24 here to help fill those voids. And if you looked at that
25 whole scheme, and what we wound up with in this rule, when I

1 look back and say we haven't got that continuous monitor
2 piece, we haven't got the operator backup plan verification
3 piece, we're down to six samples, and if they make it
4 they're gonna waive one verification test. And that's, I'm
5 just being honest, that's just not where we thought that
6 this rule would ever wind up.

7 And I think a lot of miners, like I say, don't
8 understand that, and it's because of the complexities of the
9 rule. But it's a process by which, if you step back and
10 say, is this package we have today worth trading it out for
11 what we currently have, with the changes that have been
12 made, and realizing in my own heart that this is the last
13 reform that's going to take place in coal dust sampling
14 throughout the rest of these miners' careers? I say the
15 answer is no.

16 And the reason we filed that lawsuit, again, was
17 to force out some specific changes that miners wanted. Not
18 just notations in a preamble saying we're doing all these
19 things, which takes care of addressing the union's issues
20 here. It was to get meaningful changes that miners have
21 sought for many, many years. So at the end, if there was
22 folks that was disappointed about what we may have viewed
23 about this proposal, I think we have to look at the context
24 of what the expectations were and the hard work that was put
25 into this whole operation for a quarter of a century by the

1 union and the miners to get there, and this is, no, this is
2 not the finish line that we had planned to get to.

3 With regard to the MSHA takeover, I remember one
4 conversation, I think this was at the advisory committee, it
5 was in Lexington, and I think, Ron, you had proposed a
6 monthly scheme, if my memory's correct on -- and I'll go
7 back and figure that out for clarification purposes for both
8 of us -- but you had said what about once a month, 12
9 samples a year? And that was rejected by the advisory
10 committee as not being sufficient enough. I mean I think
11 there's a lot of history where the advisory committee was on
12 record saying no, we did not want to go in that direction.

13 As far as PELLs, one of the testifiers pointed
14 out that, you know, there was discussion about going to one
15 milligram, and I know there's this proposal that's been
16 hanging out there for three years that calls for a
17 1-milligram standard.

18 This is the direction of which the advisory
19 committee had sought to go. The advisory committee had
20 addressed this issue very clearly about adjusting the PELL
21 upwards for this, and I forget what the magic words is we
22 called this, but, uncertainty, okay? And the advisory
23 committee said no. And basically what they said, two is
24 two, one is one, and we should be doing that.

25 And I think from the miners' standpoint, it

1 makes all the sense in the world that we should not be
2 passing two, that we should not be passing one, and that we
3 should be ratcheting that backwards as opposed to upwards.
4 And one way to ratchet it backwards is to listen to what the
5 miners had to say, samples always for the full shift. Use
6 that to determine what our full measurement is, and thereby,
7 you'll get some automatic readjustments downward with people
8 that have greater exposure.

9 So many more things I'll address at some of the
10 other hearing coming up, but I just wanted to give you a
11 good, you know, understanding of what this is all about.
12 This is not that we're upset with any individual or thing,
13 this is real policy here that's about to be made that
14 affects these miners for the rest of their life, and there's
15 real issues that miners have put on the table that they have
16 expected the government to do on their behalf. And this is,
17 like I say, the third trip. I mean we're wearing ourselves
18 out talking about it.

19 And we do envision the days that we'll have the
20 4B4s back again making policy decisions, cutting inspection
21 down to one or two samples a year. It's happened before and
22 it'll happen again. With that, I'll be presenting a lot
23 more documents in the record and be providing some more
24 information throughout the hearing process.

25 MR. NICHOLS: Okay. Thank you, Joe. That's the

1 last of the people we had signed up to make presentations,
2 but I believe there's some people that came in after lunch
3 maybe to just talk about the plan verification rules. If
4 that's the case, then if you would sign up, or anybody else
5 that wants to make any comments on these two proposals,
6 we'll be glad to take those. Let's take a break until, say,
7 1:40 and come back and see if there are those that want to
8 make presentations.

9 (There was a brief recess.)

10 MR. MYER: Mr. Chairman, my name's Fred Myer. I
11 feel honored to be here to talk to you all. I've spent 47
12 years on the ground working for Consolidation Coal Company.
13 Most of my generation has either had black lung or got
14 killed in the coal mine. We are here today to ask you to
15 help us because you're going to make recommendations to
16 other people, and we're asking to help us with these
17 recommendations. Black lung is a serious disease to have.
18 The reason I know that is some of friends have had black
19 lung, and they're not here to be able to talk to you all.

20 Whenever you go, whenever you get the
21 opportunity, there's a General Hospital over here, there's a
22 Ruby Hospital over here. You need to go and just visit and
23 see these people with these black lung problems. It's not
24 very funny. It's serious.

25 And you've got a thing going on here for 31

1 years, we've been making appeals to you all. It seems like
2 we're knocking on the wall but we're not getting through.
3 It's -- the ball is in your hands, because whenever you
4 leave this committee, you're going to make recommendations
5 that we're going to have to abide by . For 31 years, we've
6 been abiding by it, we've been doing what's right, and we've
7 been abiding by the law, but now it's time for you all to
8 help us a little bit.

9 The coal miners have a saying, the squeaky wheel
10 gets the grease. You got the squeaky wheel out here in the
11 audience appealing to you all to help us. Joe Main has made
12 his plea time and time again. Dennis O'Dell has made his
13 plea. But we need your help. It's time for the government
14 to take a stand. We're not in Poland. We're not in Russia.
15 We're in the United States. If we can't control this
16 problem, who in the name of God can?

17 The Bible says, we have not because we ask not.
18 Today, we are asking. We're not demanding nothing. We're
19 asking and we're pleading for your help. And I want to take
20 this opportunity to say thank you for allowing me to talk.

21 MR. NICHOLS: Thank you, Fred. That's all the
22 people we have signed up to speak. Is there anyone else
23 that would like to give testimony? Some of us will be here
24 until 5:30 today and until noon tomorrow. The hearing will
25 remain open until then, until noon tomorrow. We're going to

1 take a break now until 3 o'clock, so thanks, thanks for your
2 participation.

3 (Whereupon, at 2:00 p.m., a recess was taken
4 until 3:00 p.m. this same day.)

5 MR. SCHELL: It's 3 o'clock, and we are
6 reconvening these public hearings on single sample
7 measurements and plan verification. Is there anybody in
8 attendance that would like to address the panel at this
9 time? Let the record show that there was no response. We
10 will recess until 4 o'clock.

11 (Whereupon, at 3:00 p.m., a recess was taken until
12 4:00 p.m. this same day.)

13 MR. NICHOLS: This is Marvin Nichols. We're
14 back on the record. It's 4 o'clock. There's still no one
15 present to present testimony, so we will keep the record
16 open until 5 o'clock today and reopen again in the morning
17 at 8:30 and keep it open until noon tomorrow.

18 (Whereupon, at 5:00 p.m., the hearing in the
19 above-entitled matter was adjourned until August 8, 2000, at
20 8:30 a.m.)

21 //

22 //

1 REPORTER'S CERTIFICATE

2

3 CASE TITLE: MSHA AND NIOSH JOINT SINGLE SAMPLE PROPOSED

4 RULE

5 HEARING DATE: August 7, 2000

6 LOCATION: Morgantown, West Virginia

7

8 I hereby certify that the proceedings and evidence

9 are contained fully and accurately on the tapes and notes

10 reported by me at the hearing in the above case before the

11 United States Department of Labor.

12

13

14 Date: August 7, 2000

15

16 Debra Anderson

17 Official Reporter

18 Heritage Reporting Corporation

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